

# LA INNOVACIÓN EN ESPAÑA

César Valencoso, Consumer Insights Director





Por qué es importante  
la innovación



La realidad de la  
innovación en España



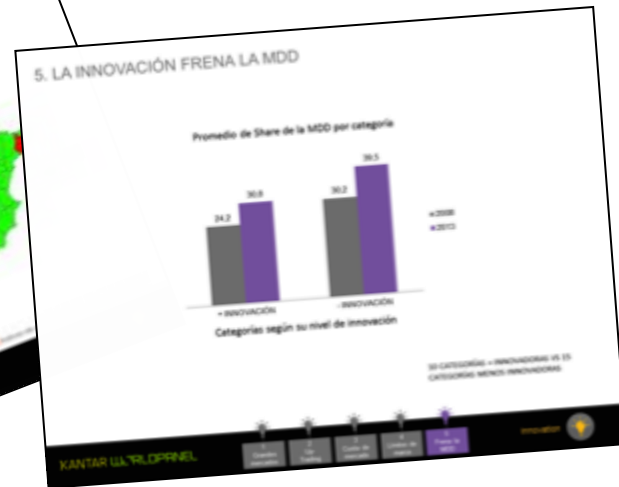
Factores limitantes de  
la actividad de  
innovación



Por qué es importante la  
innovación








# innovación



Fuente: Estudio Radar de la Innovación de Kantar Worldpanel

# LA DEMANDA DE GRAN CONSUMO DEPENDE DE LA EVOLUCIÓN DE LA POBLACIÓN

Crecimiento Medio 2008-2013

	Población
	- 0,4%
	0,2%
	0,5%
	0,8%
	1,1%



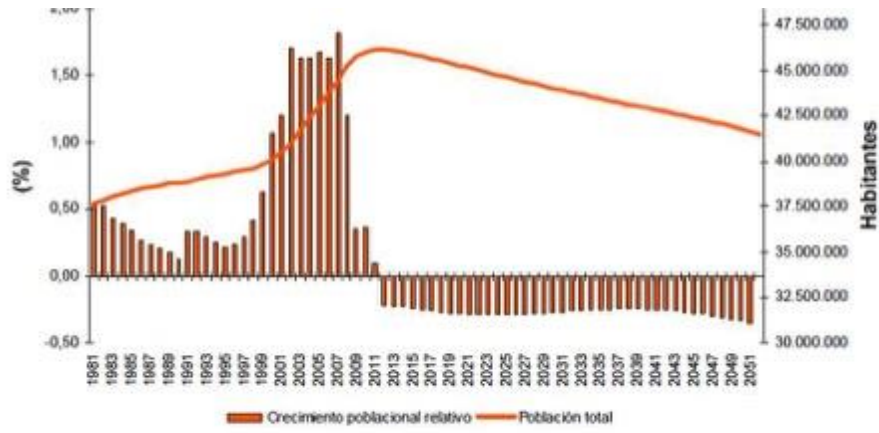
Fuente: INE/ Europanel/ Kantar Worldpanel



# LAS PREDICCIONES NOS ANTICIPAN UN MERCADO PLANO EN VOLUMEN



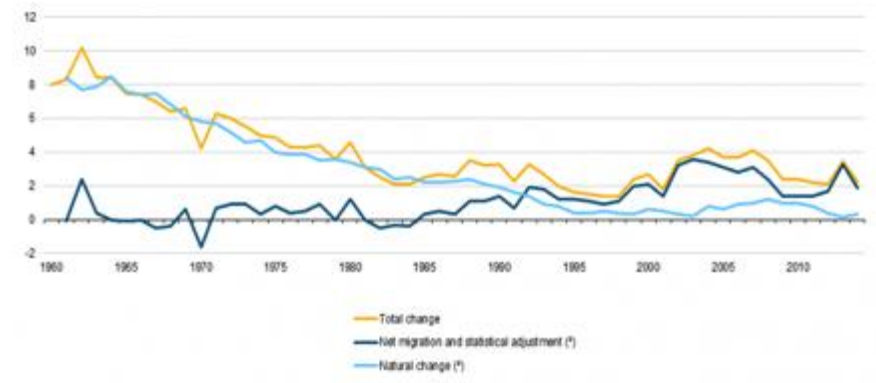
Evolución futura de la población de España



Fuente: 1981-2001, Estimaciones Intercensales de Población; 2002-2012, Estimaciones de la Población Actual; 2012-2052, Proyección de Población a Largo Plazo.



Population change by component (annual crude rates), EU-28, 1960–2014 (1) (per 1 000 persons)

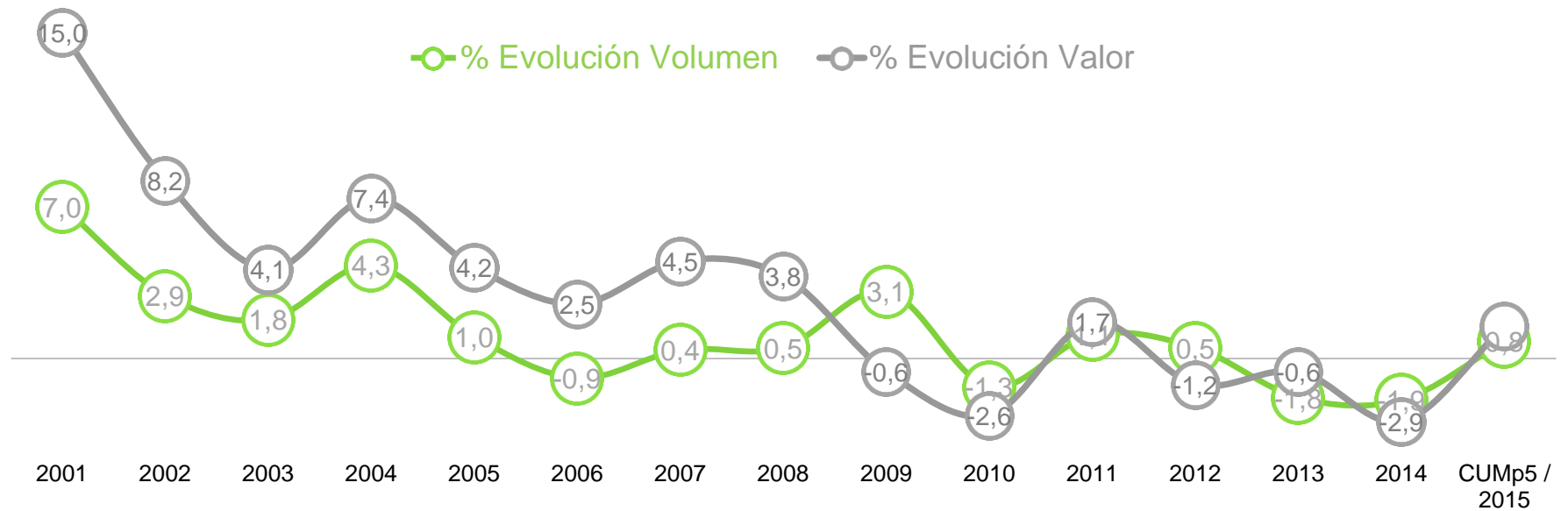


(1) Excluding French overseas departments up to and including 1997. Breaks in series: 2001 and 2010-12.  
 (\*) 1960: not available.  
 Source: Eurostat (online data code: demo\_gnd)

Fuente: INE/ Eurostat

# LA CRISIS CERCENÓ LA EVOLUCIÓN EN VALOR QUE ES LA ÚNICA VÍA DE CRECIMIENTO PARA LA INDUSTRIA

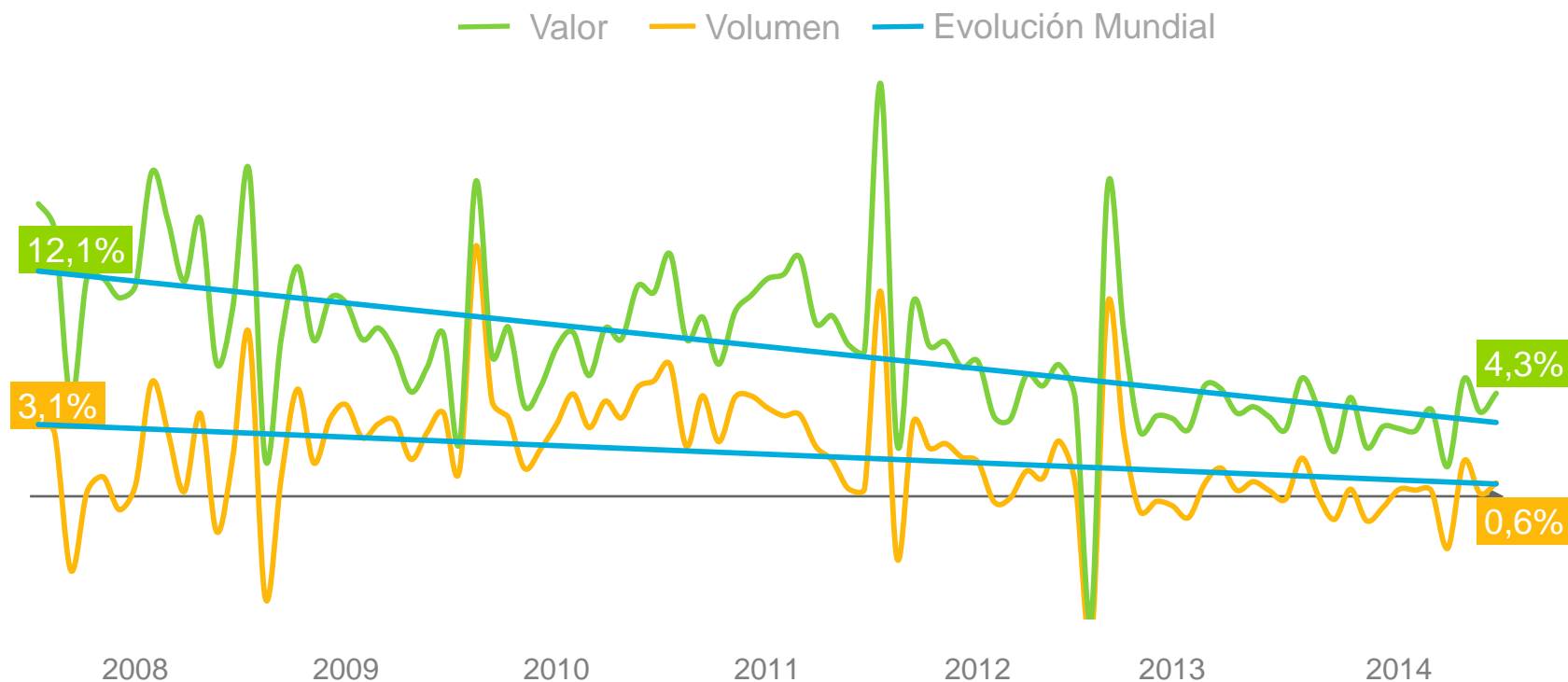
España FMCG



Fuente: Kantar Worldpanel

# EL GRAN CONSUMO MUNDIAL COMPARTE EL MISMO RETO: COMO SEGUIR AÑADIENDO VALOR A NUESTROS PRODUCTOS

Global FMCG



Fuente: Europanel/ Kantar Worldpanel.  
Global: suma de France, Germany, Italy, NL, Spain, UK, Poland, Russia, USA, Brazil, Mexico, China, India and Japan.



# LA INNOVACIÓN ESTÁ CLARAMENTE RELACIONADA CON EL DESARROLLO DE LOS MERCADOS EN VALOR

Tamaño del mercado si todos los Kg. vendidos fueran de la variedad original y no hubiera habido innovación

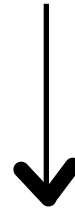
Sopas  
**68%**  
más pequeño



Café Tostado  
**53%**  
más pequeño



Yogures  
**40%**  
más pequeño



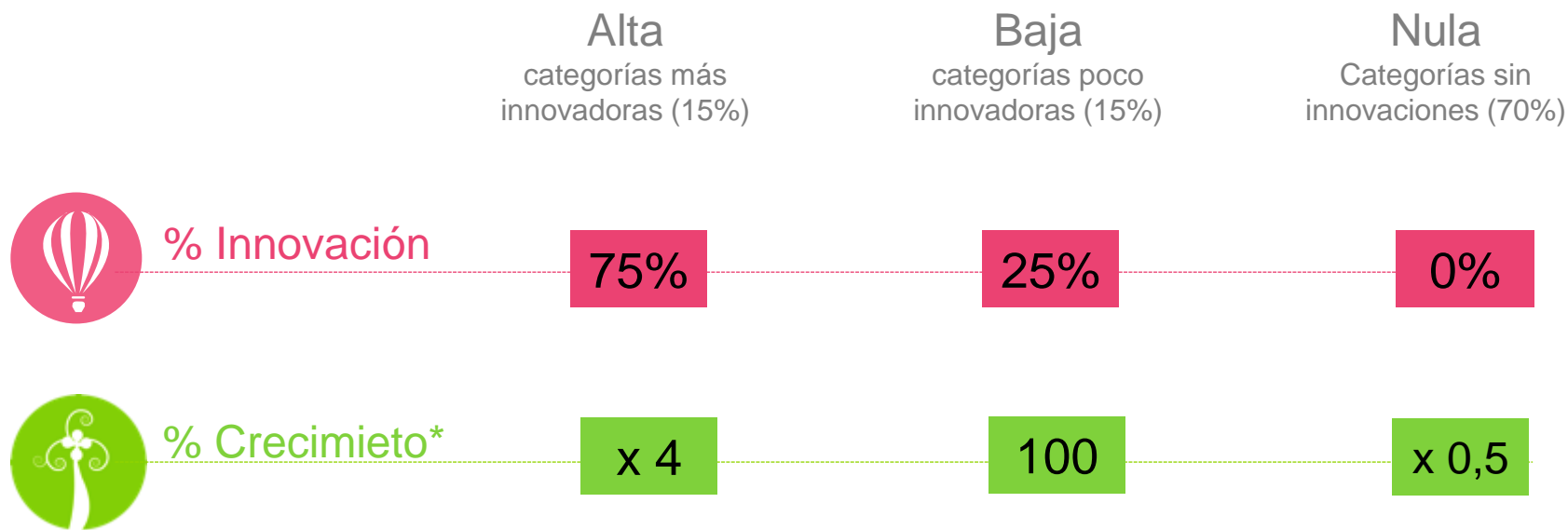
Pan de Molde  
**20%**  
más pequeño



\* Tamaño del mercado aplicando el precio medio de la variedad básica al volumen total de la categoría respecto a su tamaño real. Fuente: Kantar Worldpanel

# LOS MERCADOS INNOVADORES CRECEN 4 VECES MÁS QUE LOS NO INNOVADORES

Categorías clasificadas según su intensidad en innovación en 2014



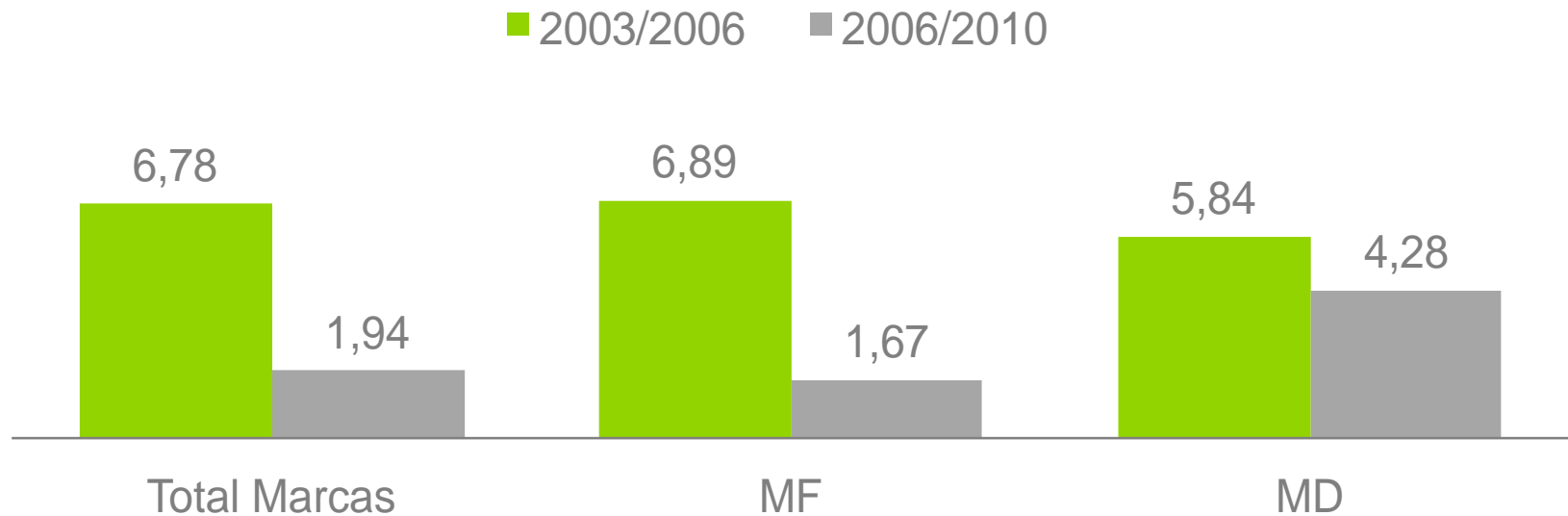
\*Promedio de % de crecimiento por categoría en valor 2014 vs 2013 haciendo 100 las categorías de baja innovación  
Fuente: Radar de la Innovación Kantar Worldpanel



## La realidad de la innovación en España

# EL TRIBUNAL DE COMPETENCIA REFLEJÓ UN DRÁSTICO DESCENSO EN LA INNOVACIÓN EN SU ÚLTIMO INFORME (OCT 2011)

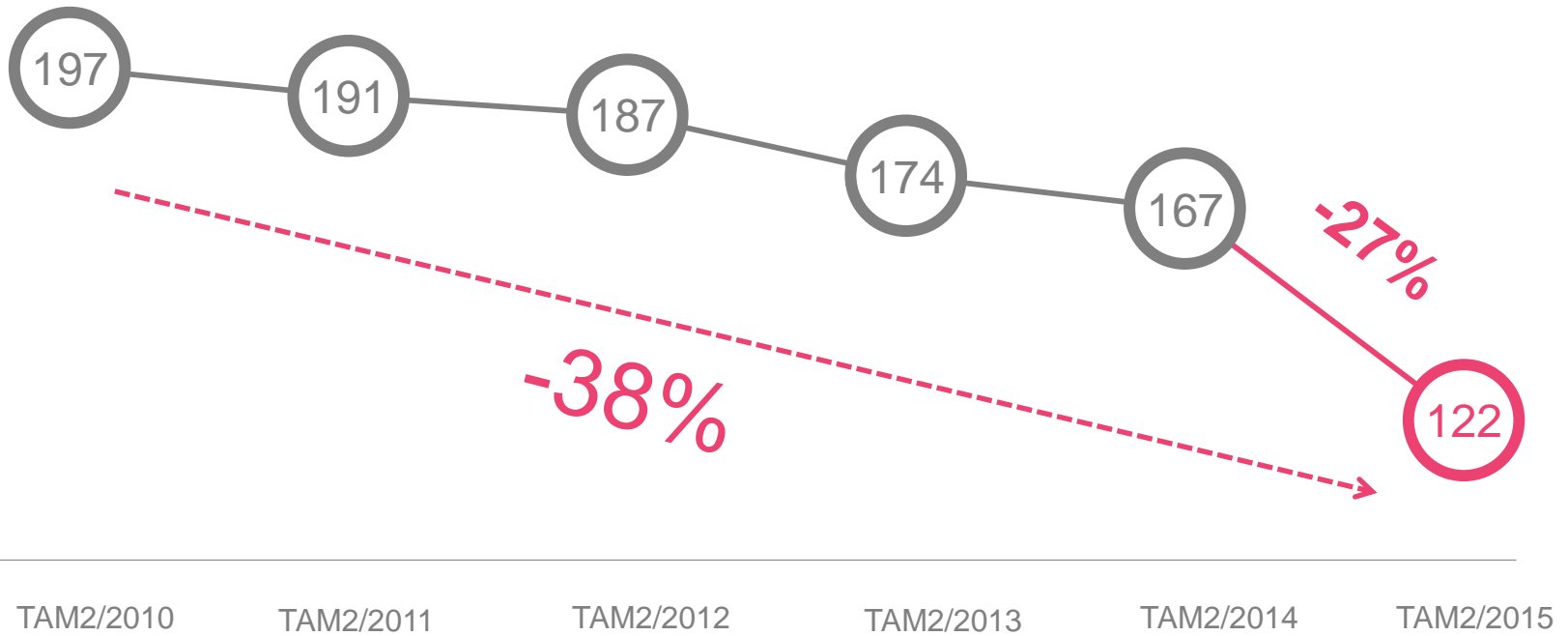
Ratio anual de introducción de nuevos sku's (2003-2010)



Source: CNC report on Manufacturers Y Distribution relationship.(Oct 2011) Own data extracted from distributors data

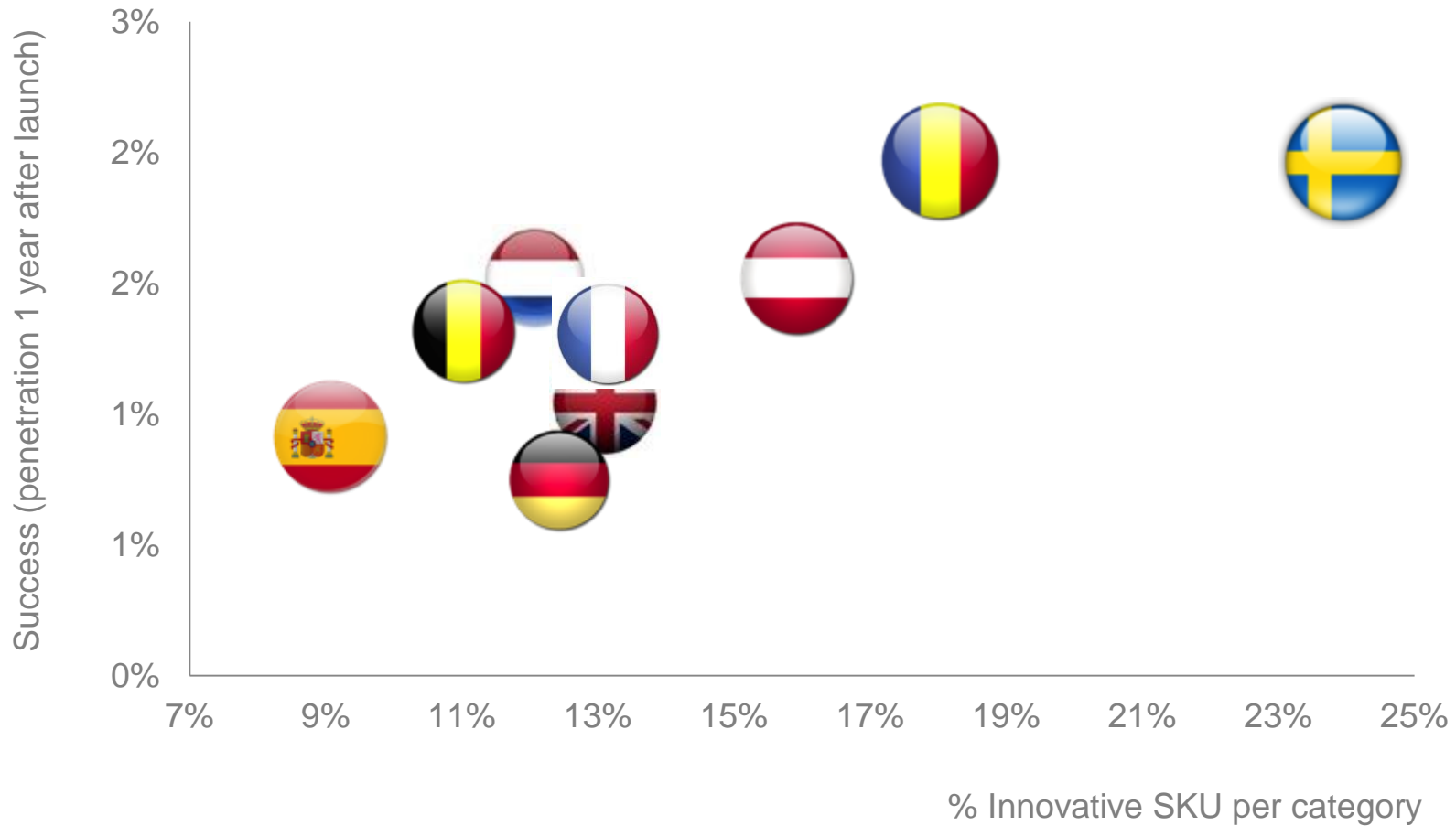
# LA INNOVACIÓN EN GRAN CONSUMO EN ESPAÑA SE HA DESPLOMADO DESDE 2010 (-38%)

Número de innovaciones en Gran Consumo



Fuente: "Radar de la Innovación" Kantar Worldpanel

# ESPAÑA A LA COLA DE EUROPA



Fuente: "Radar de la Innovación" Kantar Worldpanel/ Europanel. 2012

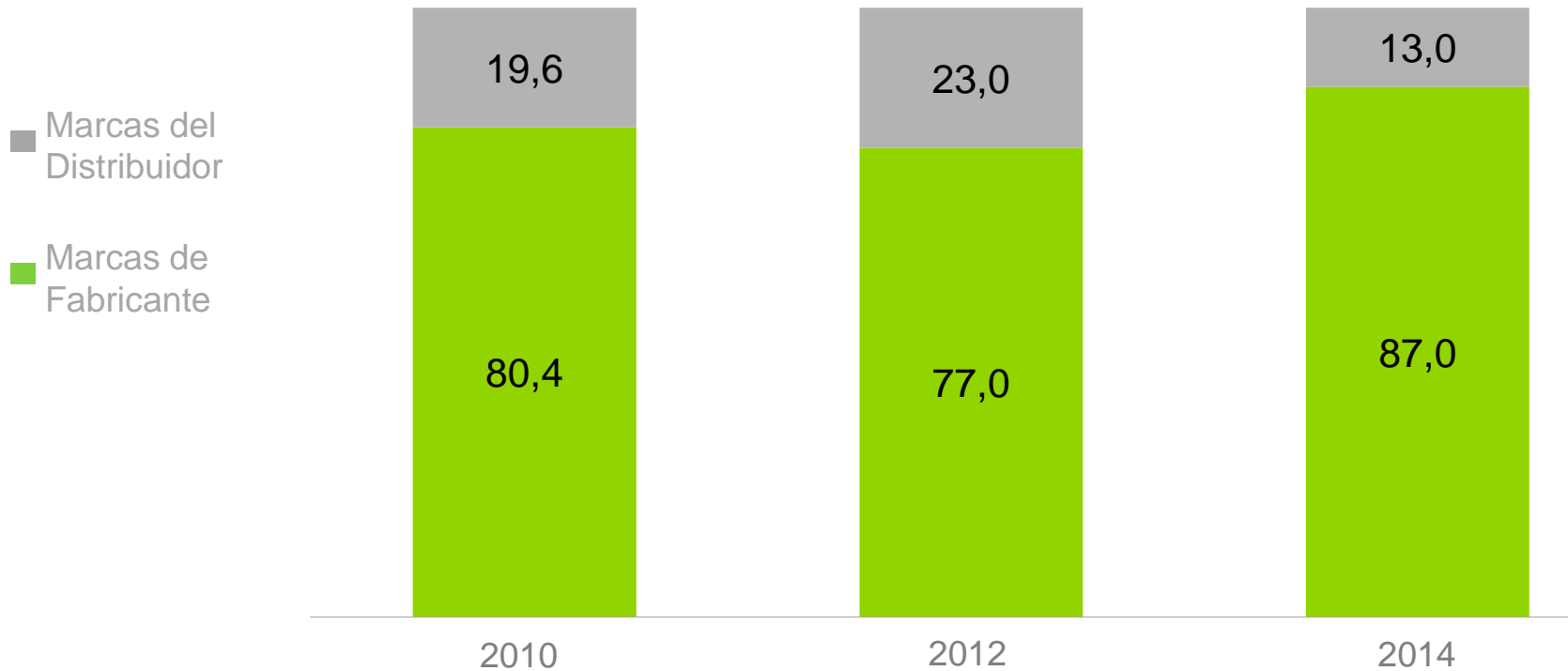




Factores limitantes de la actividad de innovación

# LA INNOVACIÓN ESTÁ SOPORTADA FUNDAMENTALMENTE POR LOS FABRICANTES

%Innovaciones. Total Gran Consumo sin Frescos Perecederos



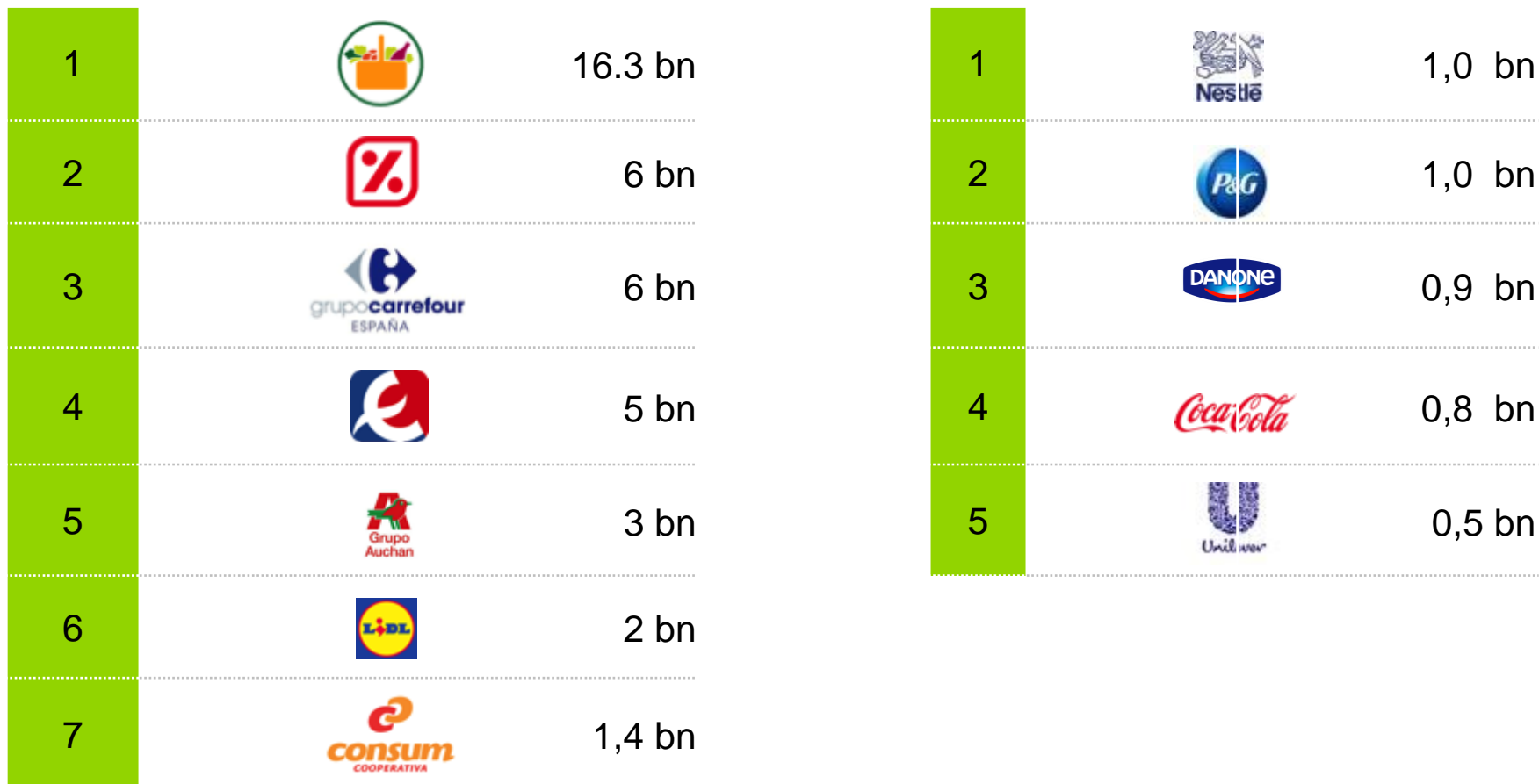
Fuente: "Radar de la Innovación" Kantar Worldpanel

# LAS MARCAS COMPITEN POR VALOR; LOS RETAILERS POR PRECIO



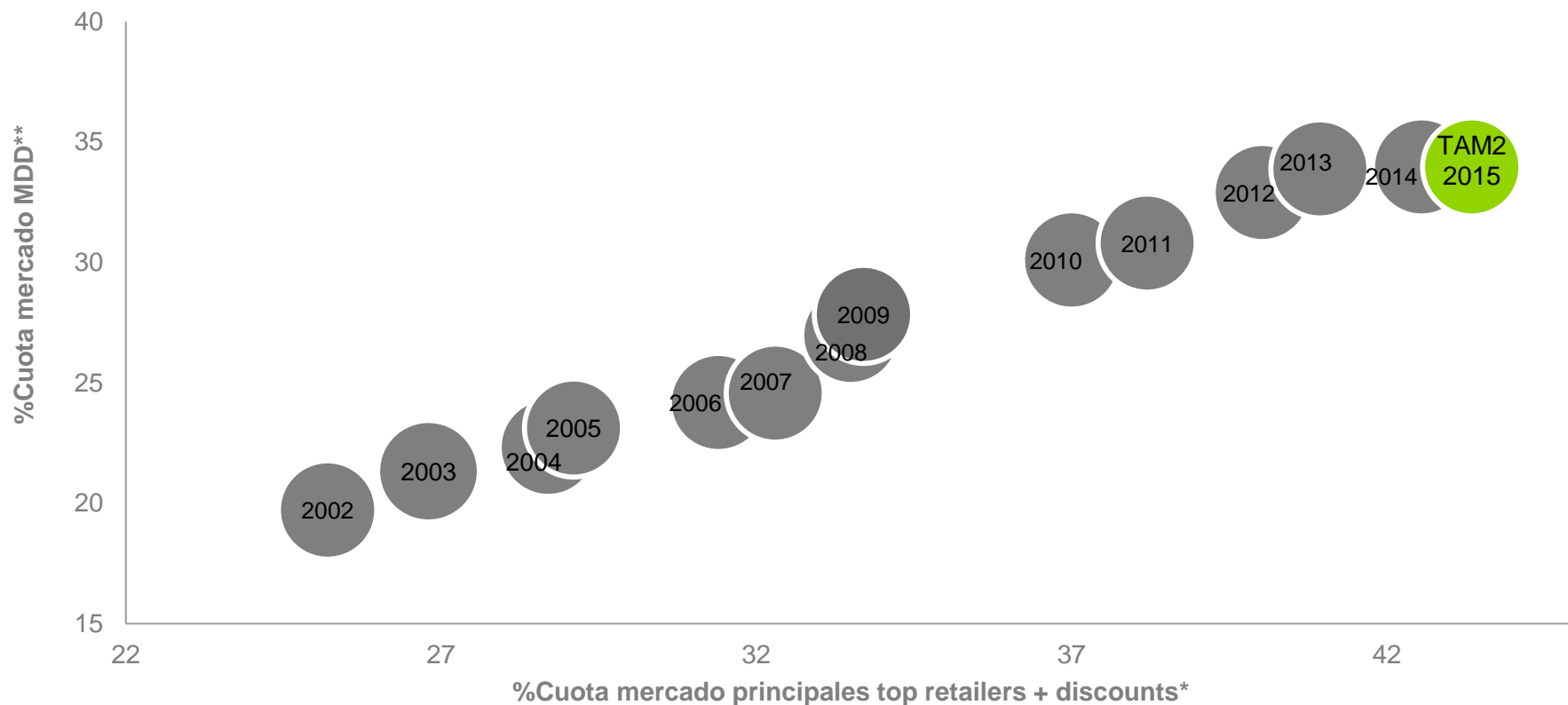
# EL PODER DE NEGOCIACIÓN EN MANOS DE LA DISTRIBUCIÓN

Valor€



Fuente: Kantar Worldpanel  
TAM p5/2015. Total FMCG in-home (Alimentación con frescos, droguería, perfumería familiar, petfood y baby)

# LA CONCENTRACIÓN DEL CANAL MODERNO MARCA EL NIVEL DE MDD



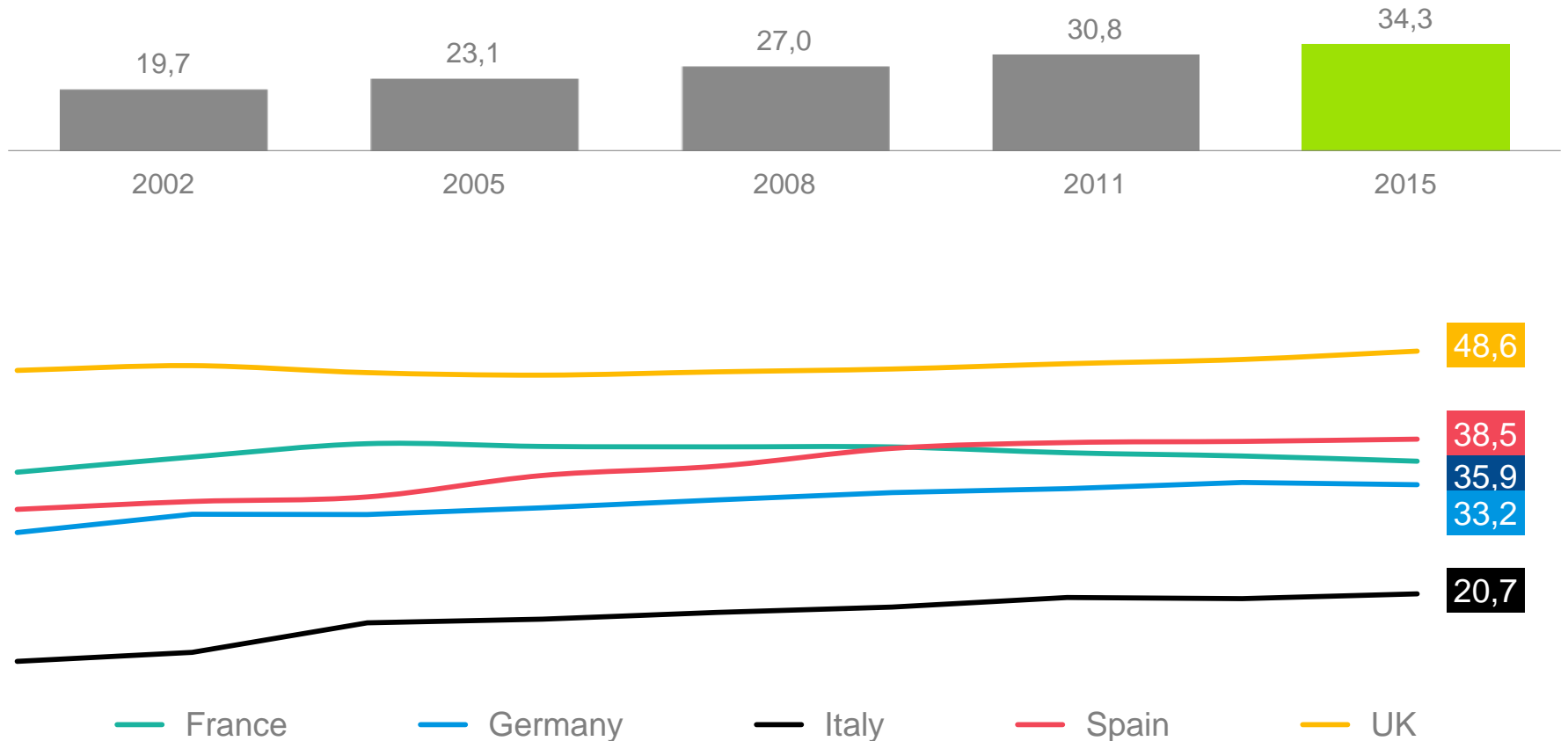
\*Mercadona, Total Carrefour, Total DIA, Lidl, Aldi. Total Alimentación + Droguería.

\*\* Total FMCG Envasado: Alimentación Envasada (sin frescos perecederos) + Droguería + Perfumería + Baby + Pet Food

Fuente: Kantar Worldpanel.

# LA MDD HA EXPERIMENTADO UN FORTÍSIMO CRECIMIENTO EN LA ÚLTIMA DÉCADA SUPERANDO A FRANCIA EN EL TOP5

% Share Valor FMCG\* España. PL CUM P06/2015



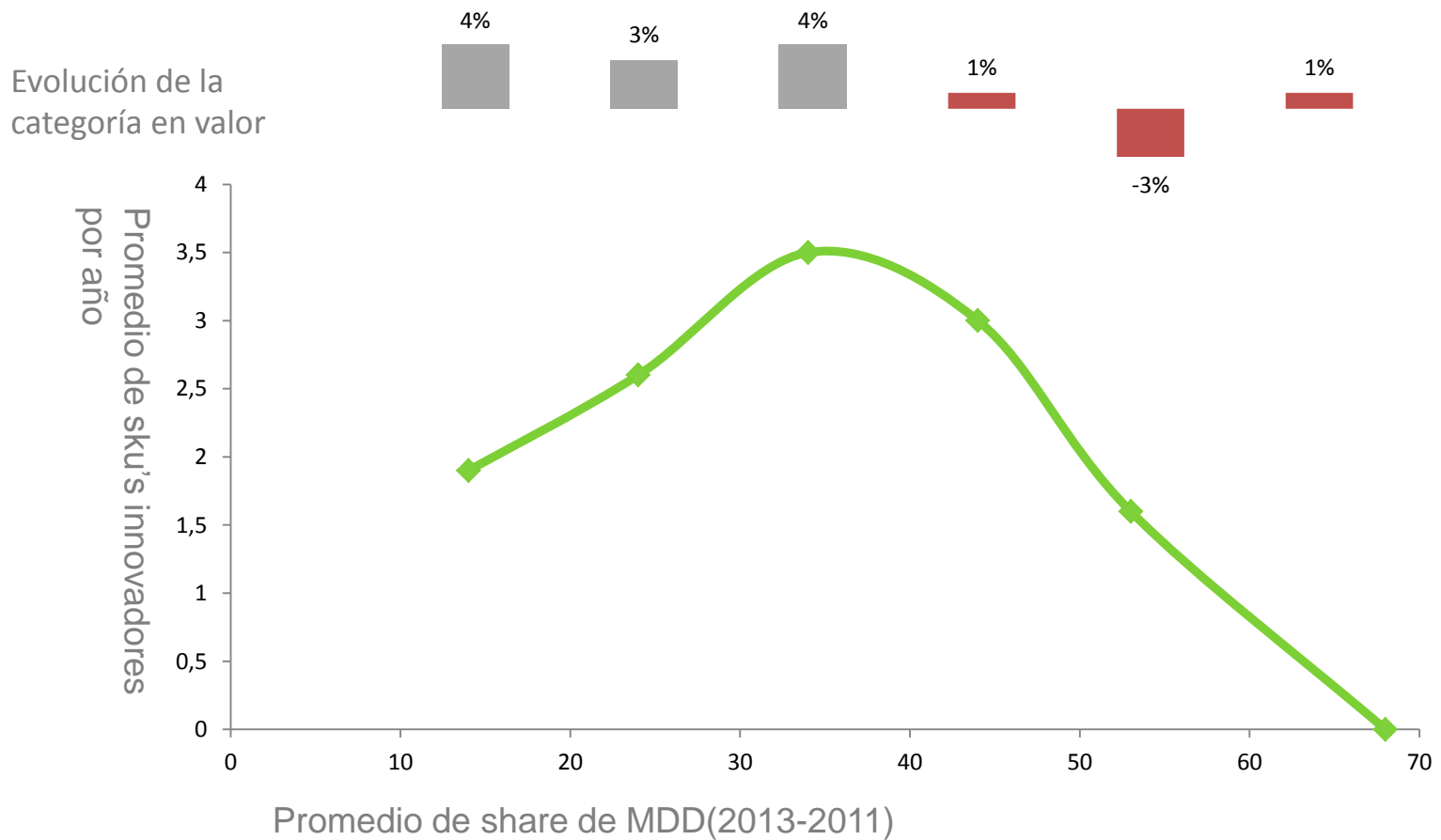
\*\* Total FMCG Envasado: Alimentación Envasada (sin frescos perecederos) + Droguería + Perfumería + Baby + Pet Food.

Fuente: Kantar Worldpanel/Europanel



# EXISTE UNA CORRELACIÓN NEGATIVA ENTRE LA MDD Y LA INNOVACIÓN A PARTIR DEL 35% DE SHARE QUE AFECTA AL CRECIMIENTO DEL MERCADO

Relación entre el share de MDD y el número de sku's innovadores

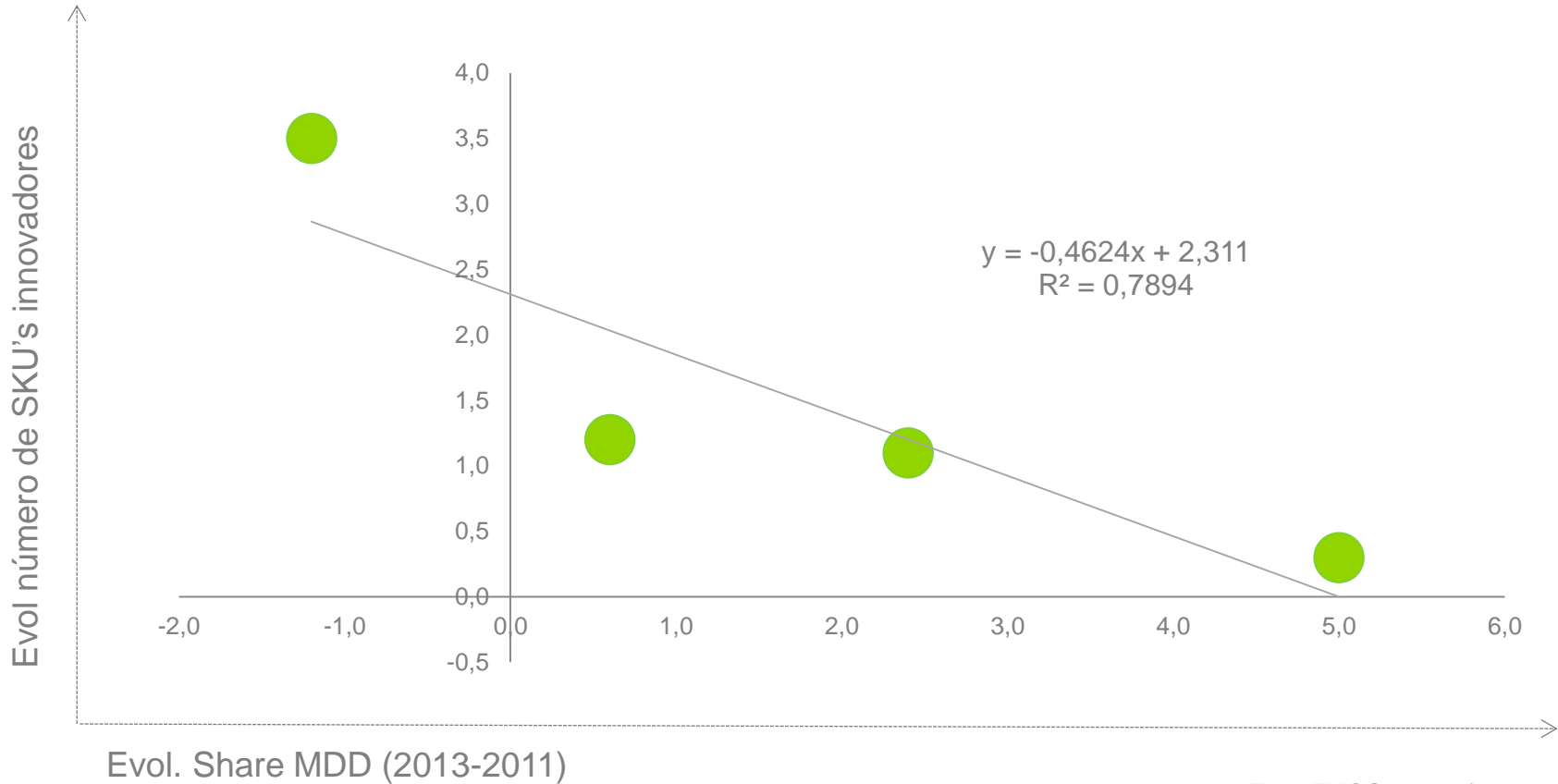


\*Total FMCG sobre (103 categorías)

Fuente: Radar de la innovación de Kantar Worldpanel

# CADA PUNTO ADICIONAL DE SHARE PARA LA MDD SUPONE ALREDEDOR DE -16% MENOS DE SKU INNOVADORES

Relación entre la evolución de la MDD (en puntos de share) y la evolución del número de sku's innovadores\*

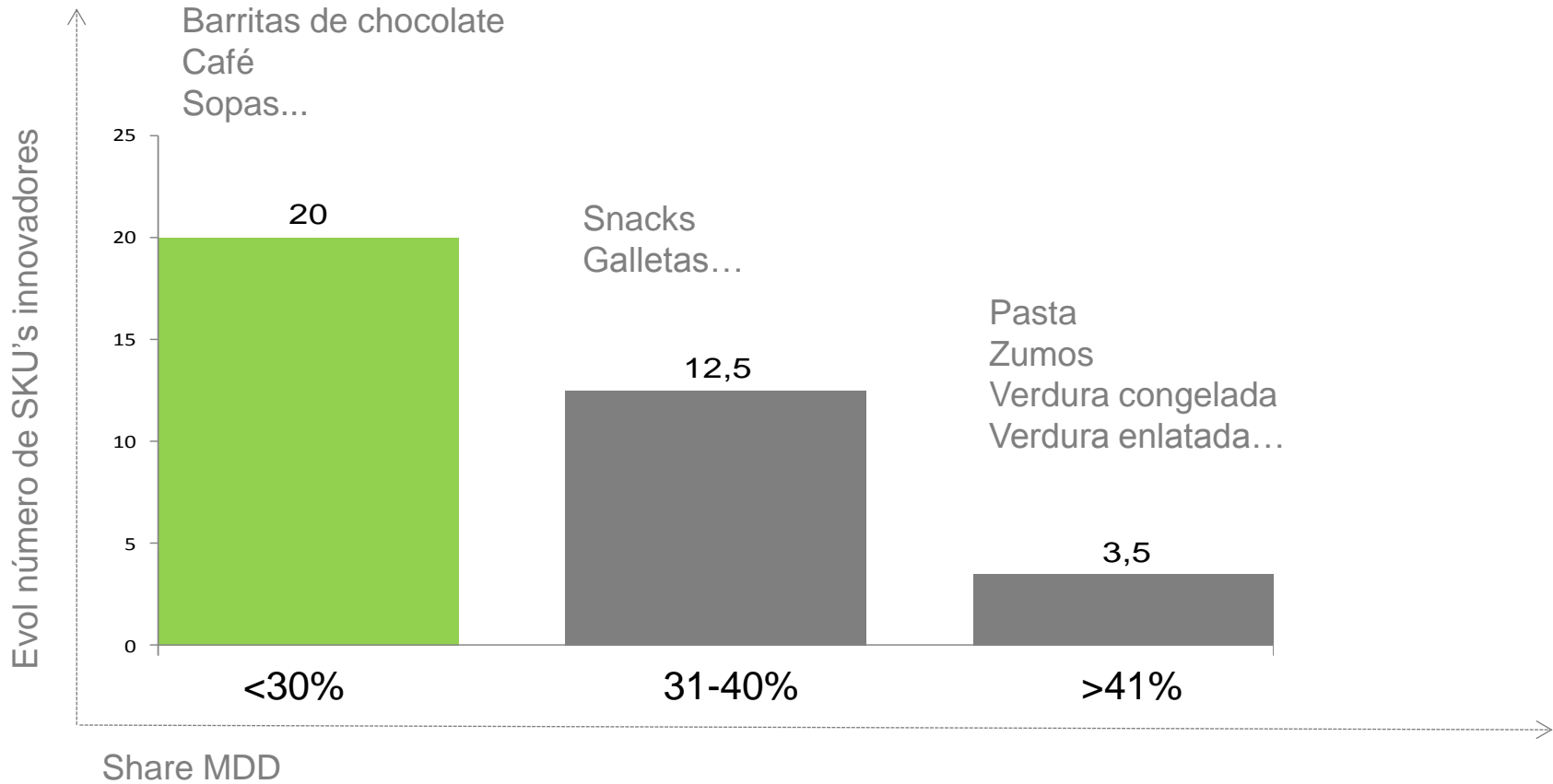


\*Total FMCG sobre (103 categorías)

Fuente: Radar de la innovación de Kantar Worldpanel

# DADO QUE LA MDD INNOVA MUCHO MENOS QUE LAS MARCAS, CUANTO MÁS DOMINAN UN MERCADO, MENOS INNOVACIÓN SE LANZA.

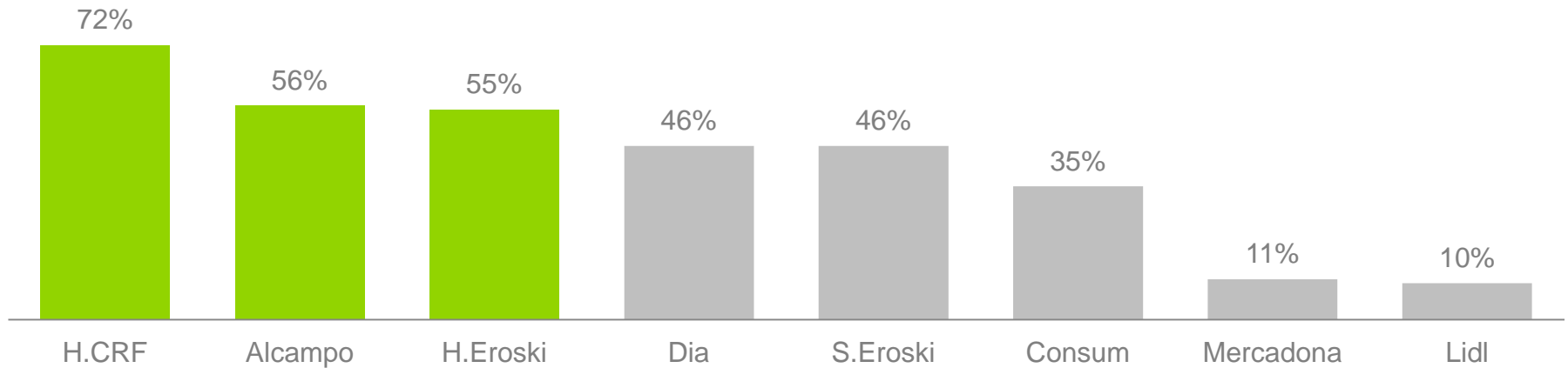
Relación entre la evolución de la MDD (en puntos de share) y la evolución del número de sku's innovadores\*



Análisis basado en 22 categorías incluidas en el estudio "the economic impact of modern retail on choice and innovation in the food sector"

# LA CLAVE ESTÁ EN EL ESCASO ACCESO DEL CONSUMIDOR A LA INNOVACIÓN EN LOS LINEALES DE LAS CADENAS LÍDERES

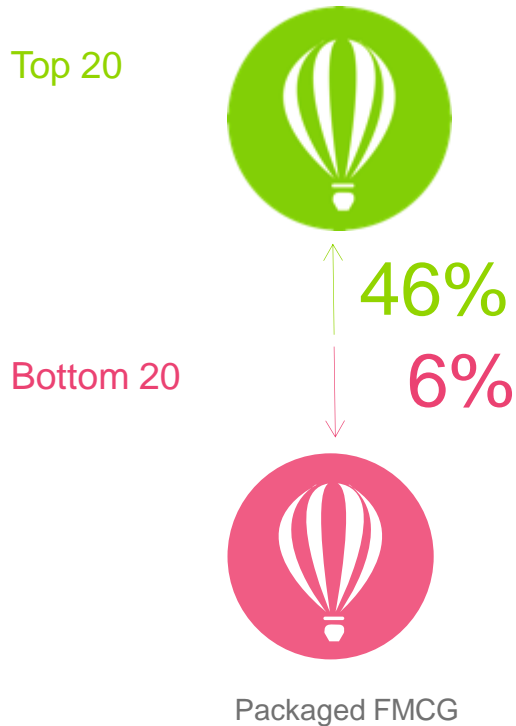
% Innovación introducida a través de la enseña. Marcas de Fabricante



Total FMCG SIN Frescos Perecederos. Fuente: Radar de la innovación Kantar Worldpanel

# SOLO 1 DE CADA 3 INNOVACIONES TIENE DISTRIBUCIONES PONDERADAS SUPERIORES A UN 30%

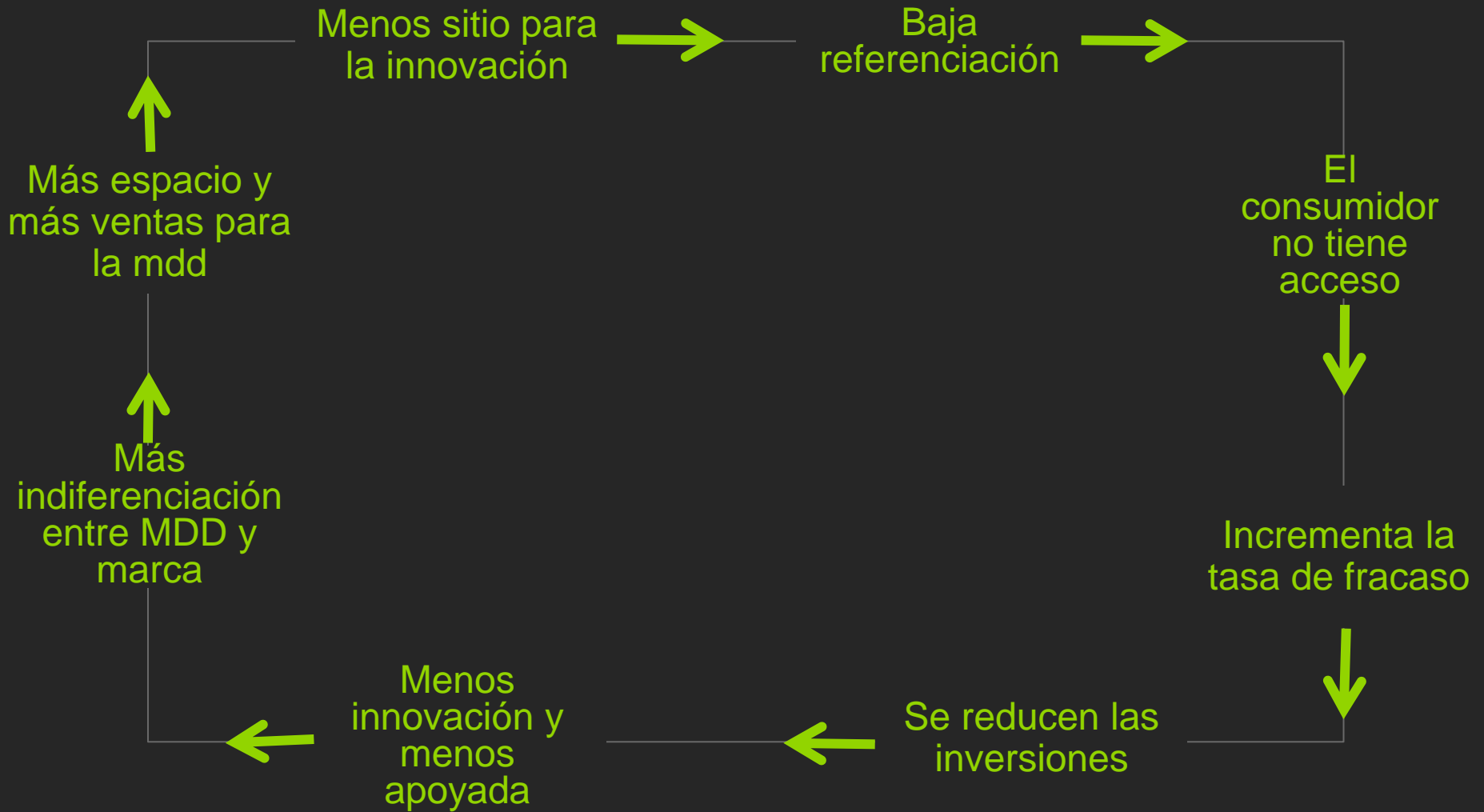
Ranking Innovaciones según Éxito

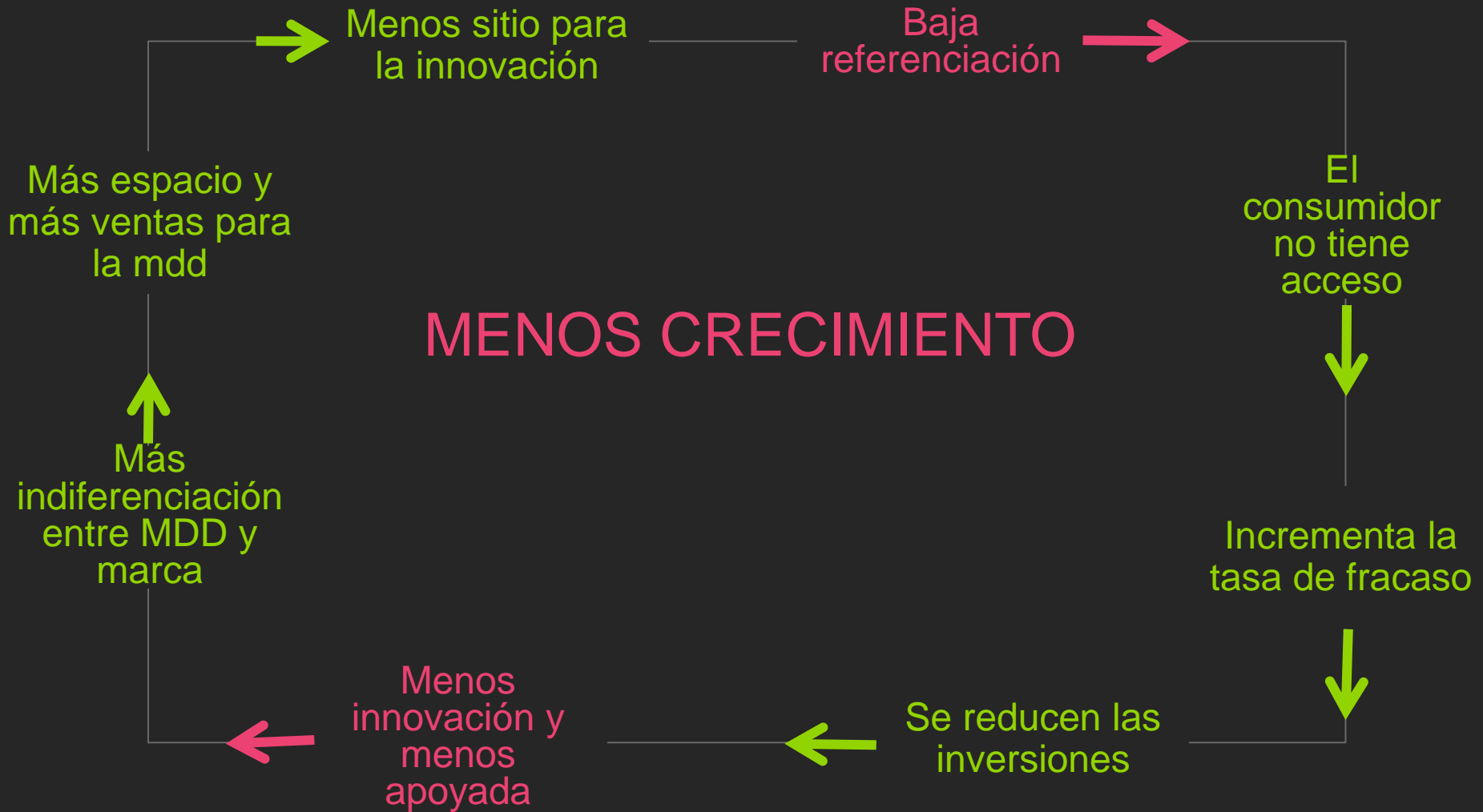


Fuente: Radar de la innovación Kantar Worldpanel

# Conclusiones







# HAY MUCHOS MÁS CONSUMIDORES DISPUESTOS A PAGAR MÁS POR CALIDAD QUE LOS QUE SOLO BUSCAN PRECIO

% Consumidores de acuerdo con la afirmación (2014)

Busco productos en oferta

73

Comparo precios para escoger ofertas especiales

80

El precio es lo más importante

27

Me gusta probar nuevos productos

52

No me importa pagar más por calidad

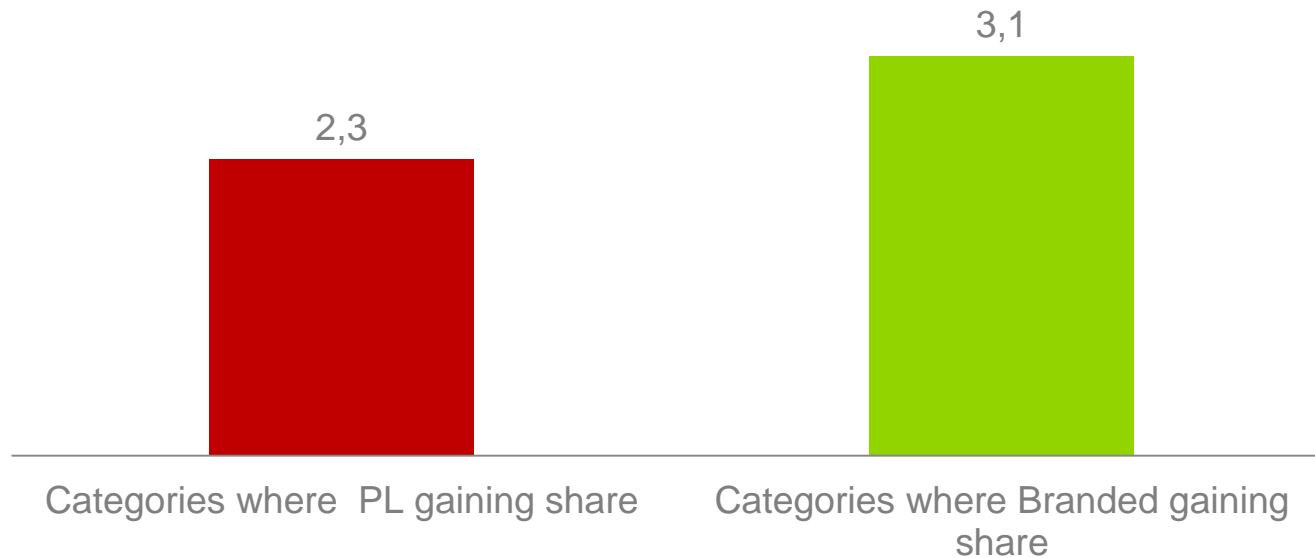
46



Fuente: Worldpanel LifeStyles 2014, Kantar Worldpanel

# LAS MARCAS HACEN CRECER A LAS CATEGORÍAS CERCA DE UN 50% MÁS QUE LA MDD

Promedio de crecimiento de 676 categorías en 8 países



©Europanel | Based on Value CAGR for 676 categories 2012 vs earliest data available. Austria (vs 2008), Belgium (08), France (08), Germany (07), NL (08), Romania (08), Spain (08), Sweden (07), UK (07)

# LA INNOVACIÓN EN ESPAÑA

César Valencoso, Consumer Insights Director





# ***The impact of modern retail on choice and innovation***

## **ESADE Symposium on Innovation, Variety and Competition in Consumer Goods**

*Madrid, 17 September 2015*

**Philippe Chauve**  
Head of the Food Task Force  
DG Competition  
European Commission

*The views expressed in this presentation are personal and do not commit the European Commission*



## ***The Commission study on the EU retail sector***

- **Motivation for the study:**

- ***Complaints*** at national and EU level argue that large retailers impose detrimental conditions on food suppliers (food manufacturers and farmers) and that this reduces their means to invest, thereby decreasing choice and innovation.
- ***Nobody really checked such negative long term effects*** of retailers' practices on consumer welfare

- **Objective of the study: deliver quantitative evidence**

- Provide facts about the evolution of concentration at the different levels of the supply chain
- Identify the possible (positive and negative) drivers of choice and innovation: concentration factors, imbalances, economic environment, socio-demographics, shop characteristics, shop opening, etc

- **Method of the study**

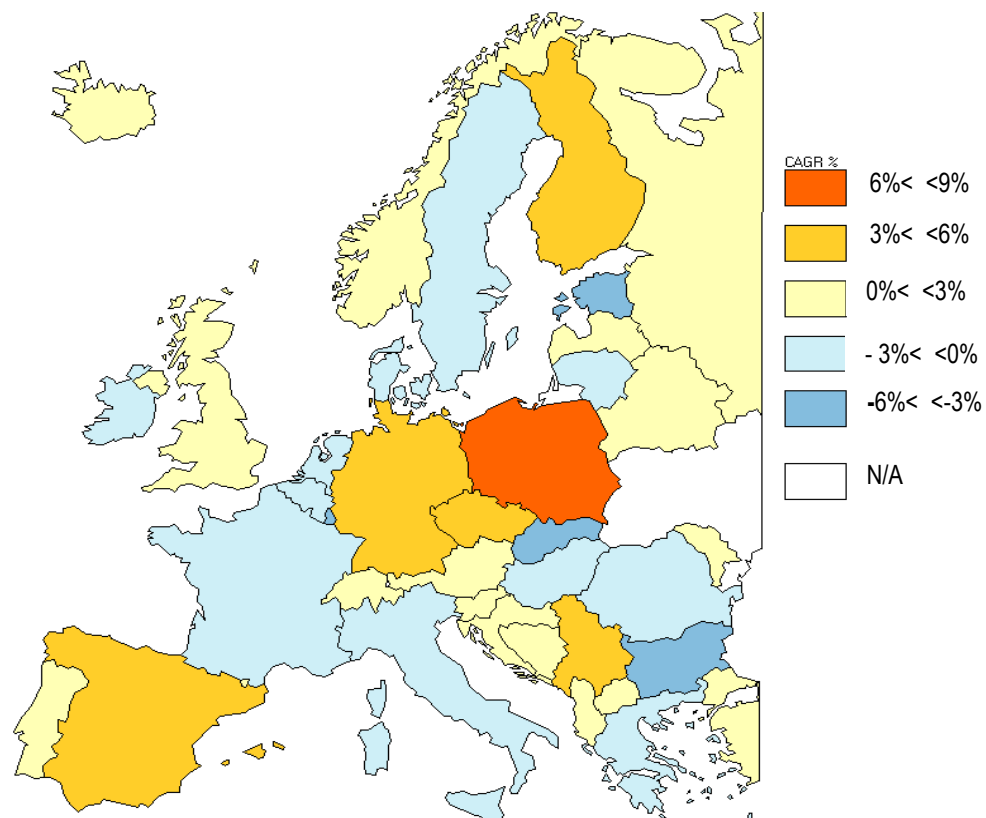
- Construction of a comprehensive database on a representative sample for the EU, containing more than 100 local areas in 7MS: various situations of areas and local retail concentration, various situations of supplier concentration and imbalances between retailers and suppliers at national level, etc
  - *Caveat: only moderately concentrated national retail markets were covered*
- Detailed data on choice and innovation on retailers' shelves, more than 100,000 different products, covering 23 product categories, 2004-2012;
- Econometric analysis: choice/innovation vs possible drivers

# Main conclusions of the Commission Retail Study

## (1) The concentration of modern retailers at wholesale level

- Retailer concentration (including both modern retailers and traditional retail shops) has increased overall, due to the increasing share of modern retail.
- Concentration of modern retail at national level has decreased in a majority of EU Member States (16 out of 26 reviewed).

Evolution of modern retail concentration across Europe  
(at national level)

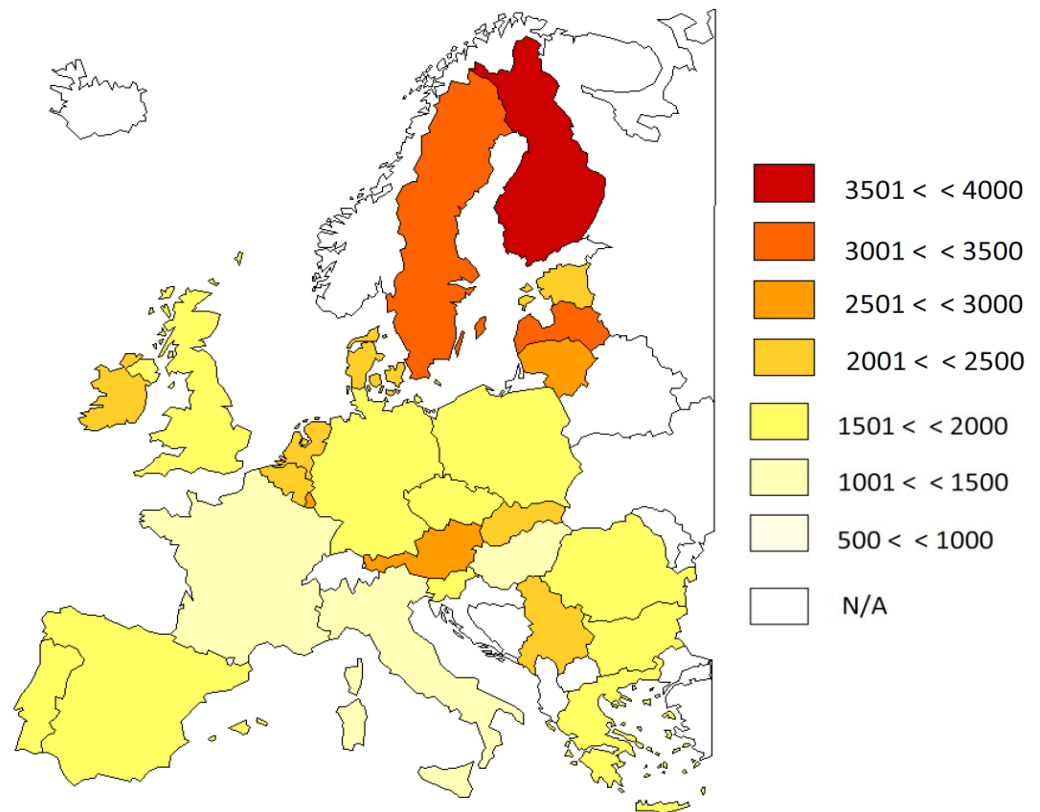


## ***Main conclusions of the Commission Retail Study***

### **(1) The concentration of modern retailers at wholesale level**

- Most EU member states have low-moderately concentrated modern retail sectors (below 2500)
- The Nordic and Baltic countries have highly concentrated retail sectors (above 2500)

### ***HHI of Modern Retail sector (2012)***

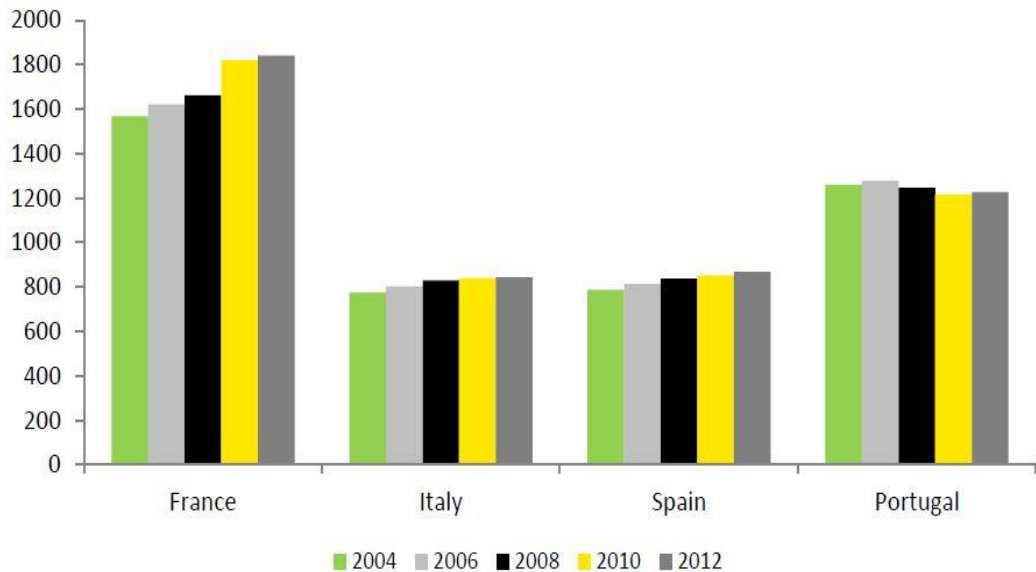


Sources: Planet Retail, EY analysis.

## (1b) The situation of modern retail at retail level

- The types of modern retail vary between Member States
  - Proportion of discounters, supermakets and hypermarkets
  - The sales area of the different formats
- Retail concentration varies at local level

Figure 102: 2004-2012 data set: Average sales area of supermarkets per MS (national level) – in m<sup>2</sup> for 4 MS sample (source: EY analysis based on © Planet Retail)



## (2) The concentration of suppliers at wholesale level

- The market structure of suppliers varies widely between product category and member state, from low concentration (green) in some to high concentration (red) in others.

Concentration of top 3 suppliers, by product and member state

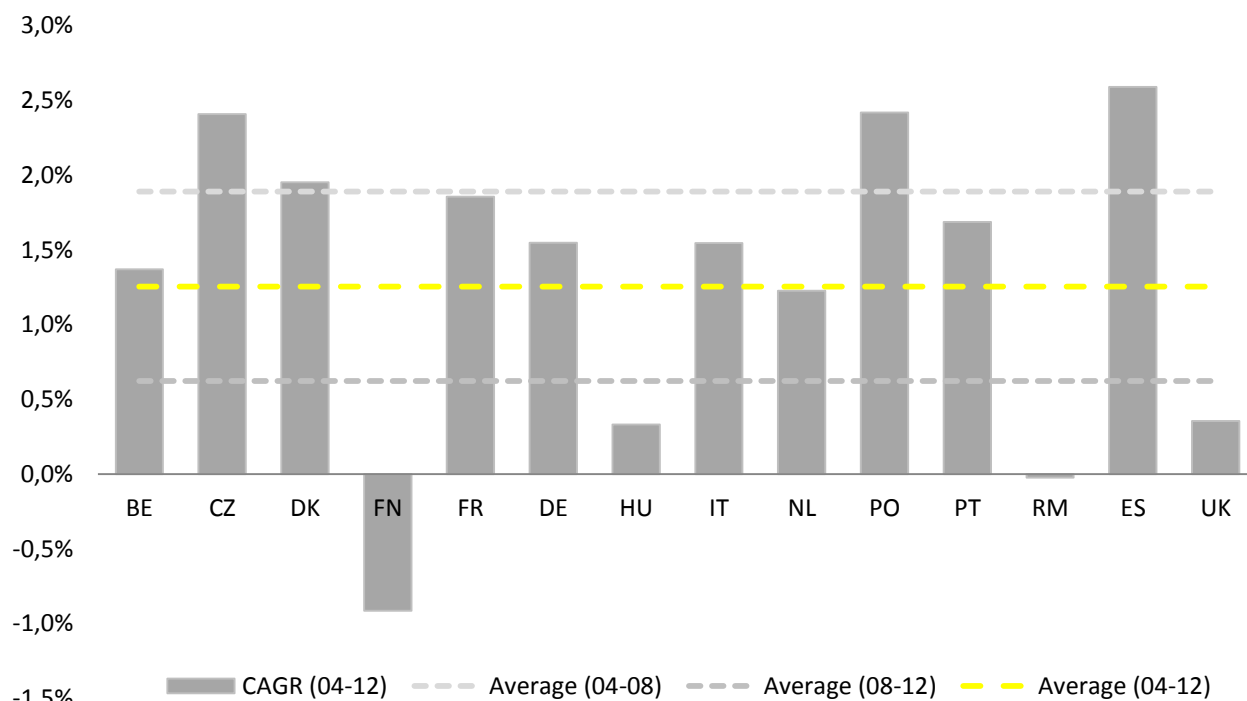
Product Category	FIN	DE	ROM	CZ	POL	NL	FR	HUN	BE	IT	POR	UK	SPA	GER	Average
Baby food	90%	91%	80%	74%	89%	79%	77%	74%	81%	83%	79%	64%	64%	78%	79%
Coffee	74%	64%	76%	62%	66%	73%	72%	70%	69%	56%	65%	59%	74%	42%	66%
Cereals	47%	57%	54%	71%	65%	47%	72%	42%	61%	83%	64%	56%	51%	44%	58%
Yoghurt	77%	81%	75%	43%	61%	41%	70%	50%	48%	60%	47%	55%	65%	34%	58%
Ice Cream	86%	57%	54%	42%	50%	78%	60%	62%	55%	22%	67%	44%	65%	47%	56%
Soft drinks	56%	59%	74%	49%	40%	40%	68%	49%	63%	52%	46%	59%	75%	41%	55%
Tea	70%	62%	59%	39%	55%	73%	56%	61%	47%	48%	54%	55%	46%	44%	55%
Chocolate	67%	53%	63%	71%	39%	47%	45%	49%	59%	61%	48%	67%	49%	45%	54%
Mineral water	70%	68%	52%	66%	45%	61%	72%	38%	58%	59%	31%	49%	31%	24%	52%
Biscuits	72%	60%	34%	81%	66%	42%	59%	60%	39%	51%	30%	38%	40%	41%	51%
Butter/margarine	67%	79%	48%	42%	29%	57%	40%	53%	47%	43%	56%	73%	32%	29%	50%
Frozen pizzas/starters	44%	48%	33%	55%	56%	75%	53%	66%	49%	54%	40%	39%	24%	53%	49%
Frozen ready cooked meals	58%	58%	86%	67%	43%	48%	29%	34%	56%	57%	40%	30%	37%	39%	49%
Savoury snacks	53%	56%	66%	49%	47%	50%	43%	43%	64%	31%	45%	44%	46%	40%	48%
Milk	83%	69%	45%	38%	54%	41%	42%	48%	26%	41%	51%	18%	38%	15%	44%
Fruit Juices	57%	58%	56%	46%	64%	36%	44%	43%	22%	50%	42%	30%	38%	24%	43%
Desserts	62%	72%	39%	33%	36%	49%	33%	43%	40%	56%	43%	25%	40%	21%	42%
Edible oil	34%	29%	51%	46%	58%	42%	48%	56%	35%	34%	47%	28%	26%	26%	40%
Frozen vegetables	44%	32%	33%	47%	45%	44%	35%	28%	41%	46%	31%	42%	27%	42%	38%
Cheese	72%	62%	50%	44%	40%	25%	42%	59%	19%	19%	43%	16%	29%	20%	38%
Canned vegetables	33%	18%	48%	47%	68%	53%	41%	19%	38%	14%	20%	43%	28%	24%	35%
Ham	53%	47%	34%	45%	56%	4%	28%	42%	24%	17%	42%	13%	27%	19%	32%
Bread	55%	43%	11%	22%	5%	13%	7%	2%	5%	7%	8%	47%	9%	20%	18%
Average	62%	58%	53%	51%	51%	49%	49%	47%	46%	45%	45%	43%	42%	35%	

Sources: Euromonitor Passport, EY analysis. Based on 2012 data.

## (2) The concentration of suppliers at wholesale level

- However supplier concentration per member state (averaged across product categories) has **increased** over 2004-2012 in 12 of 14 MS analysed.
- Similarly, supplier concentration per product category (averaged across member states) has **increased** over 2004-2012 for almost all categories.

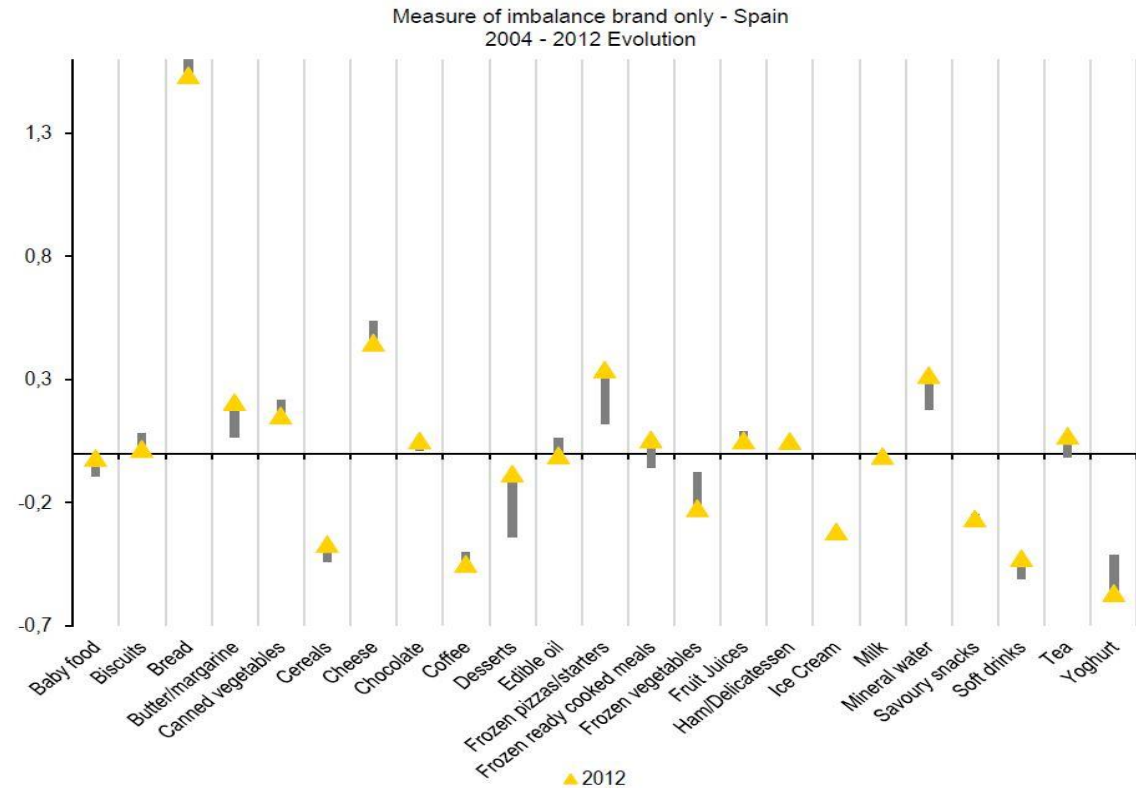
Evolution of supplier concentration (HHI brands only), 2004-2012



Source EY analysis based on Euromonitor International, CAGR of HHI

## (2) Imbalances between retailers and suppliers

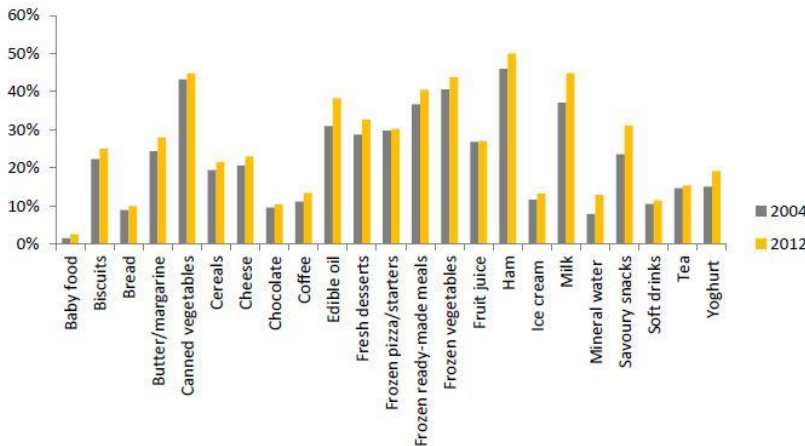
- The ratio of concentration of retailers and brand suppliers varies per state and per category
- The retail side of the market is not always the most concentrated side. In a sample of 14MS and 23 categories there were as many situations where suppliers were stronger than retailers.



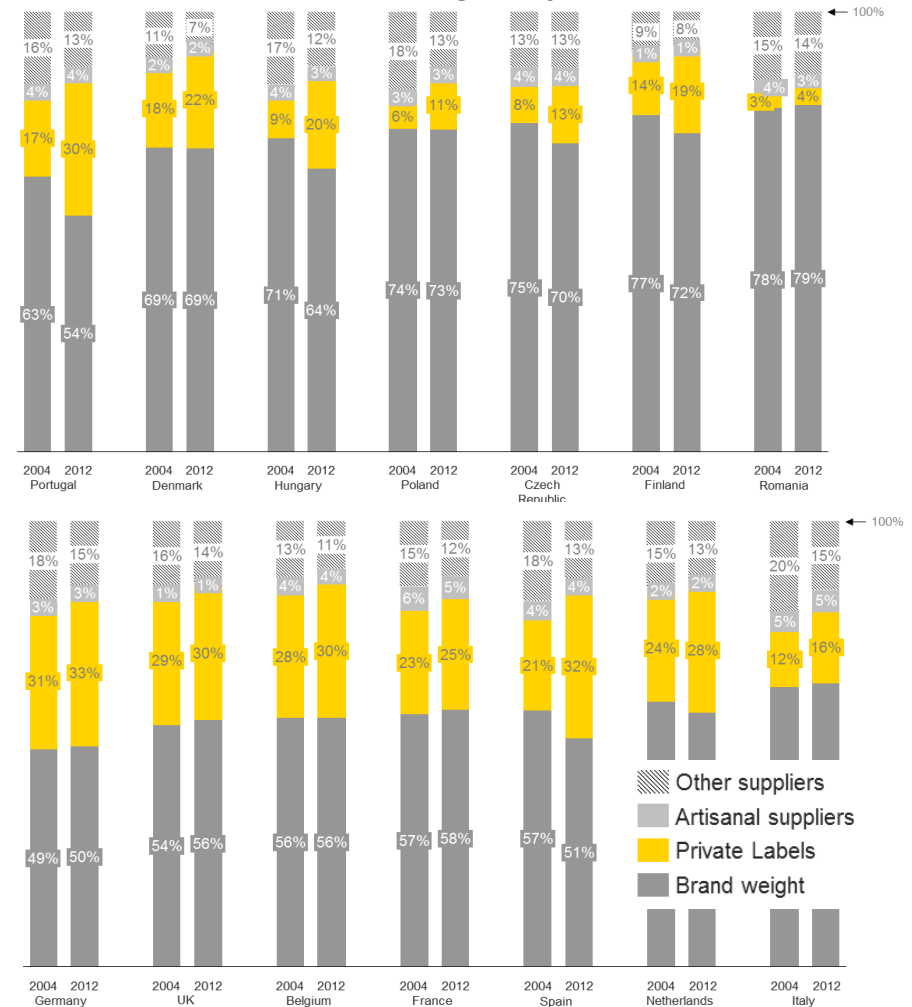
# Private labels and brands

- Varied situations per member state and per category
- Brands continue to dominate in value of sales (50%-80%)

Figure 113: Percentage of private label sales share by product category - average across 14 MS (national level) (source: EY analysis based on © Euromonitor International)



## Market share in edible grocery market



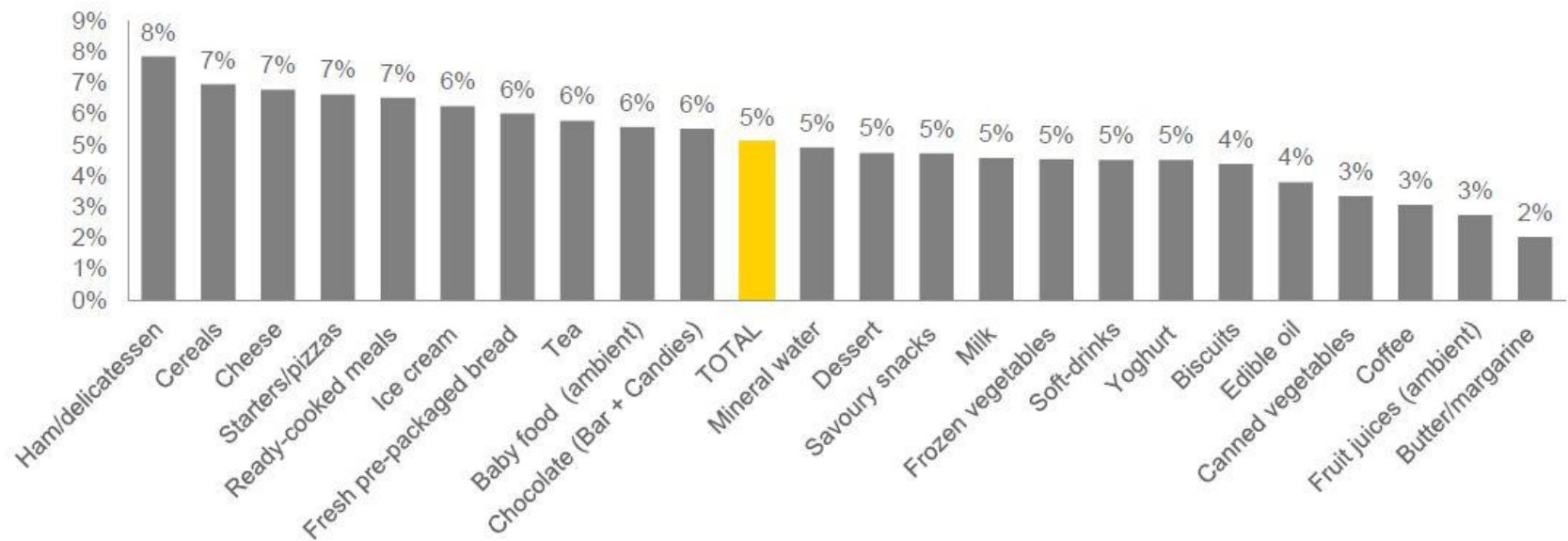


### (3) Has choice on retailers' shop shelves declined in Europe?

- No!
- Choice in local retail shops increased over the last decade, both in terms of the number of different products and different brand suppliers, and in all product categories
- A slowdown could however be observed since 2008.

#### Per product category

Annual growth of total number of EAN by product category 2004-2012



#### **(4) Has innovation on retailers' shop shelves declined in Europe?**

##### Caveats before answering

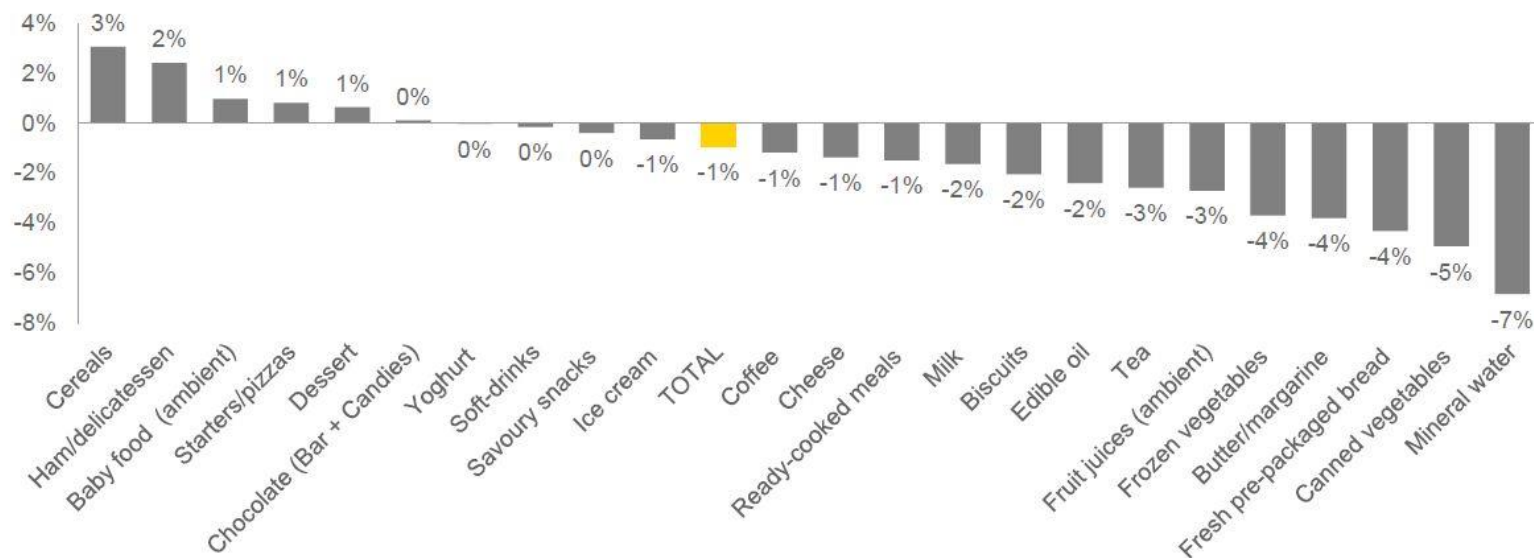
- No universally accepted definition of innovation
- Study measured different dimensions
  - The universe of new EAN codes (excl. Promotions)
  - Categories according to Mintel
    - Packaging innovations
    - Range extensions (e.g. new flavours)
    - New formulations (e.g. change of ingredient)
    - New products

#### (4) Has innovation on retailers' shop shelves declined in Europe?

- Yes!
- Innovation increased until 2008; since then a decline in the innovation rate can be observed for most product categories.

##### Per product category

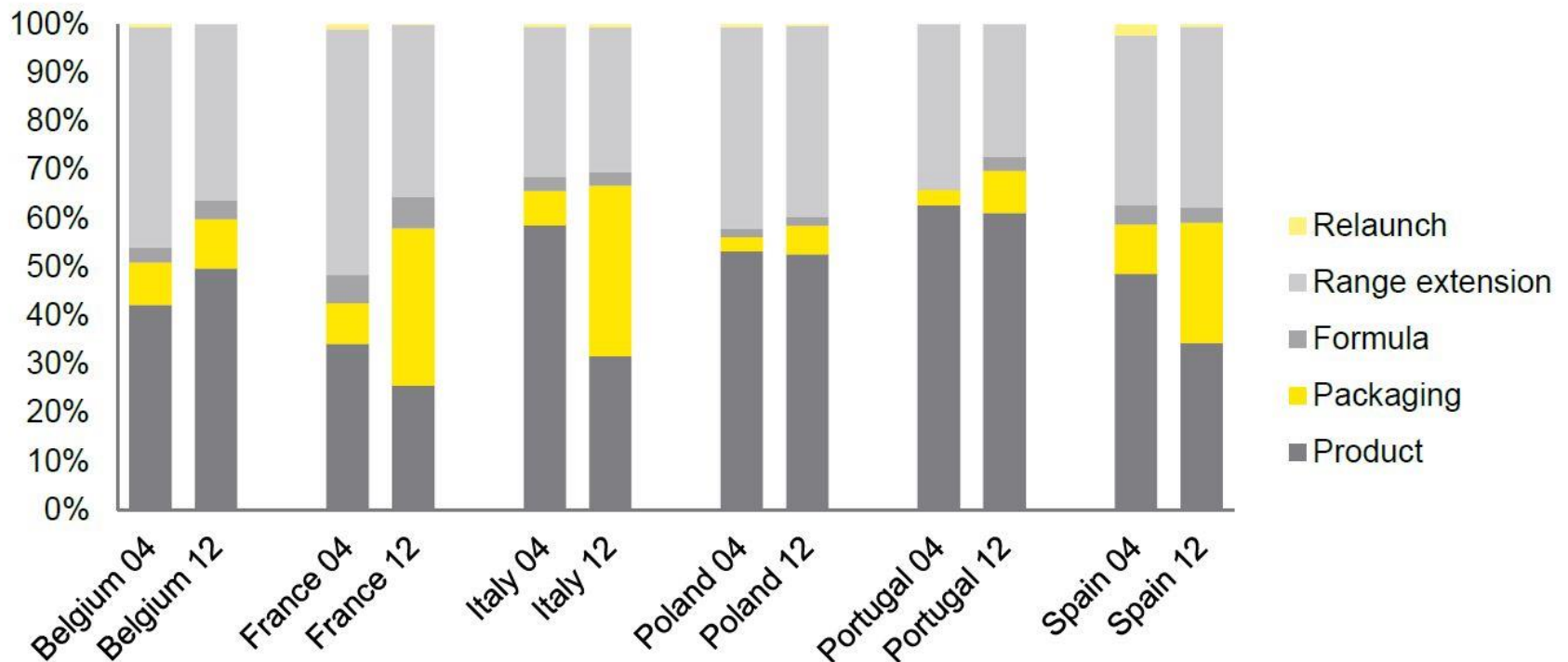
Annual growth in number of new EAN codes by product category 2004-2012



#### (4) Has innovation on retailers' shop shelves declined in Europe?

- Trend towards more packaging innovation

**Figure 51 : 2004-2012 data set: Proportion of types of innovations by MS (local level)**  
(source: EY analysis based on © Mintel GNPD and © Nielsen Opus)



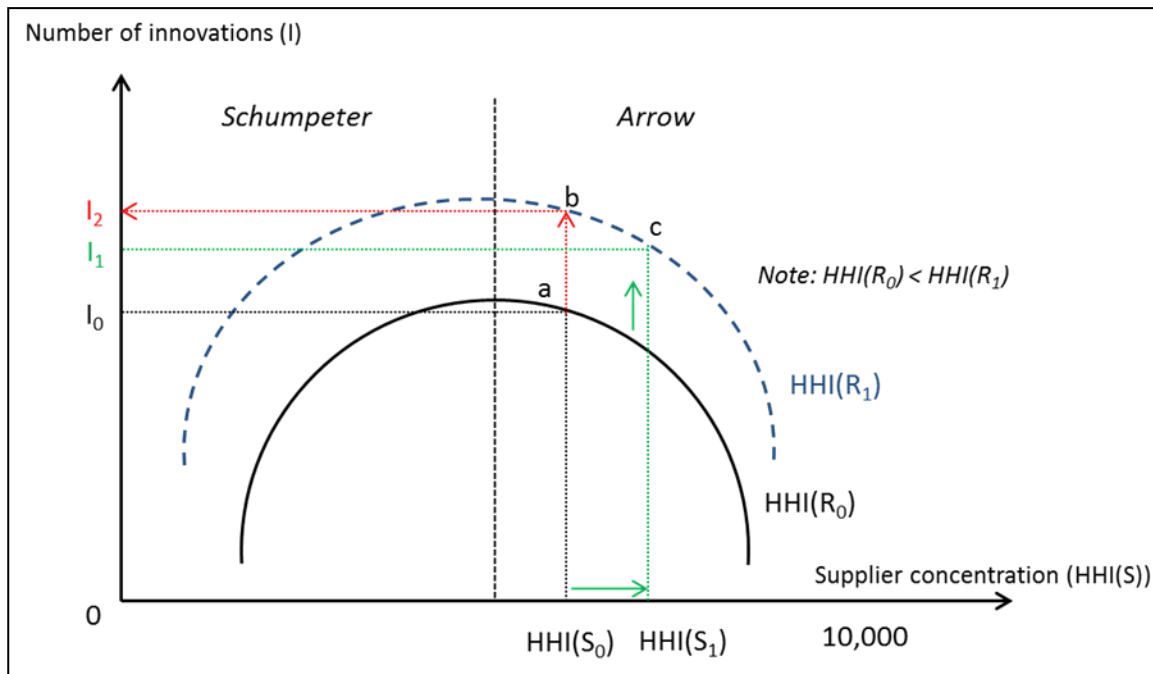
## (5) What are the main likely drivers of choice and innovation?

*(note: result of econometrics in moderately concentrated national retail markets)*

- Positive drivers:
  - The **opening of a new shop** in local consumer shopping areas
  - The **expansion of modern retail outlets** in terms of floor space
  - The **size of the product category**
  - For innovation: An **increase in the relative wholesale concentration of retailers** vis-à-vis their suppliers
- Negative drivers:
  - The **economic environment** since 2008, measured by the local unemployment rates and local GDP/capita
  - For innovation: higher levels of **supplier (wholesale) concentration (at national level)**
  - For innovation: The proportion of **private labels** in the product assortment, measured as the proportion of PL products in EANs and new EANs by shop and product category.

# Key result concerning retailers

*Increased wholesale concentration of retailers relative to suppliers appears to be good for innovation in moderately concentrated national retail markets*



Source: The Commission's modern retail study – A. Renckens/P. Chauve analysis

## ***Are there competition issues?***

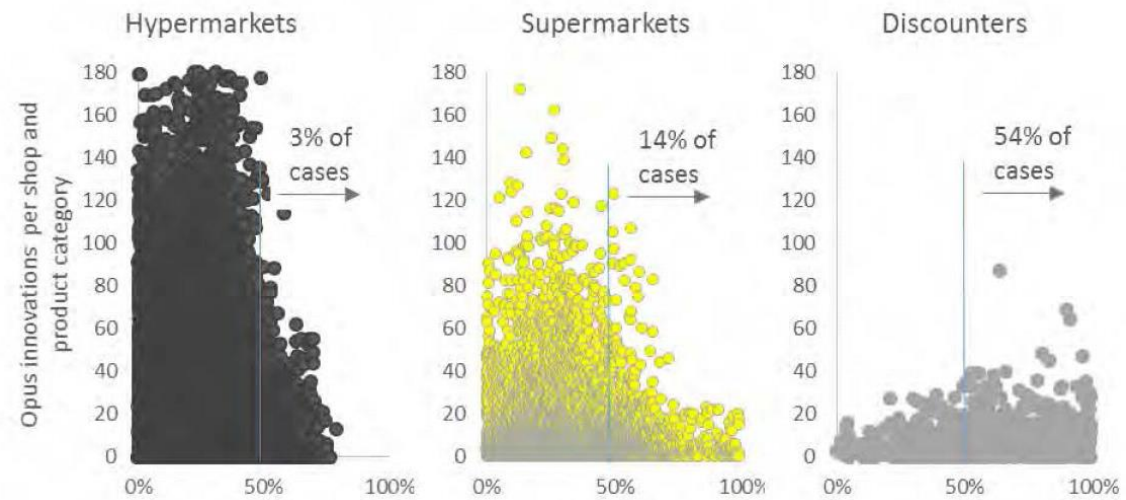
- Is there a problem in highly concentrated national retail markets?
  - To be investigated by the relevant national authorities
- Are private labels a problem for innovation?
  - To be developed (see after)
- Retailers in buying alliances may actually not pass on benefits (e.g. lower prices) when they do not face competition downstream
  - Italian case: Centrale Italiana
  - Norwegian case: Norgesgruppen/ICA

## How do private label products impact on choice and innovation?

(note: in moderately concentrated retail markets)

- Graphical analysis of the **relationship between choice/innovation and private label penetration** suggested a non-linear relationship exists, distinct from the linear relationships found for other drivers. This motivated a refinement to the analysis concerning the specification of the relationship between PL share and choice/innovation.
- Including the square of private label share in the regression suggests there is a **significant negative non-linear relationship between innovation and PL penetration** (decrease is larger the higher the share of PLs).
- No significant relationship with choice however.

Innovation and private label share



Source: Figure 154 from Modern Retail Study



# Possible explanations why PL penetration is associated with less innovation (*follow-up Study*)

- *Assortment effect theory*: PL products may be less innovative than brands by nature, and replacing brands with PLs on the shop shelf therefore leads to a less innovative range of products;
- *Consumer choice theory*: the study results may be driven by consumer choices and retailers may be simply giving consumers what they demand. Alternatively, consumers may not easily switch between shops, giving retailers little incentive to maintain an innovative product offer;
- *Crowding-out effect theory*: increased PL penetration may reduce brands' incentives to innovate, e.g. because they cannot get the scale required to make innovation profitable, or because retailers use PLs to engage in practices such as marketing copycat products that reduce brand incentives to introduce innovation.
- *Missing piece theory*: the PL variable used in the study may capture the effect of an unexplained variable not included in dataset, such as variation in stocking policy at store-level that is not measured by retailer format.

What's your view?

*Thank  
You  
For  
Your  
Attention!*



# Useful links

- **DG Competition study**, "*The economic impact of modern retail on choice and innovation in the EU food sector*" (October 2014):  
[http://ec.europa.eu/competition/sectors/agriculture/retail\\_study\\_report\\_en.pdf](http://ec.europa.eu/competition/sectors/agriculture/retail_study_report_en.pdf)
- **European Central Bank**, "*Retail market structure and consumer prices in the Euro Area*" (December 2014): <http://www.ecb.europa.eu/pub/pdf/scpwps/ecbwp1744.en.pdf>
- See also **European Central Bank**, "*Within- and cross-country price dispersion in the Euro Area*" (November 2014):  
<http://www.ecb.europa.eu/pub/pdf/scpwps/ecbwp1742.en.pdf>

## ***European Central Bank work on market structure and prices***

The European Central Bank has carried out a project on consumer prices (as part of its work to understand inflation mechanisms).

They have published several studies using a comprehensive AC Nielsen scanner dataset covering 9 member States across 45 food product categories over 2009-2011. The studies look at differences in price levels across the Euro Area and their drivers.



After controlling for income levels, VAT, unemployment, population density and business cycle, the studies find significant impacts of concentration and competition on prices:

- **Downstream retail competition (i.e. lower local retail concentration) is associated with lower prices for the end consumer**
- **Higher retail concentration in the procurement market (including buyer groups) is associated with lower prices for the end consumer (welfare-enhancing).**
- **Concentration of suppliers has a large impact on price differentials across EU countries – lower concentration of suppliers is associated with lower prices.**

## GSCOP: the UK experience of managing unfair commercial practices and retailer buyer power

---

Rona Bar-Isaac



# Why a GSCOP?

- ▶ A little history
  - ▶ Concern about practices employed by retailers with buyer power
  - ▶ Identified series of practices that adversely affected competition
  - ▶ “a climate of fear”
  - ▶ Addressed by way of 2001 Code, applied to big 4
  
- ▶ Why revisit?
  - ▶ Code flawed in a number of ways
    - ▶ too few retailers covered
    - ▶ hard to interpret
    - ▶ lacking in binding mechanism to resolve disputes
  - ▶ Widely regarded a failure
    - ▶ very few complaints
    - ▶ dispute resolution procedure not used
    - ▶ no successful enforcement

## Why a GSCOP?

- ▶ CC findings in 2008
  - ▶ Large grocery retailers have buyer power in relation to at least some suppliers
  - ▶ Exercise of buyer power can benefit consumers through lower prices but can also cause harm where:
    - ▶ excessive risks or unexpected costs are transferred by retailers onto suppliers
    - ▶ leading to reduced incentives for investment by suppliers
    - ▶ unchecked, consumers would ultimately be harmed by reduced investment in quality and innovation
  - ▶ Other concerns, e.g. category management, own-label, discounted

## Why a GSCOP?

- ▶ The 2008 answer

- ▶ New GSCOP to remedy flaws of old Code
- ▶ Binding dispute resolution procedure
- ▶ Supported by a dedicated Ombudsman to oversee enforcement



## Key features of the Code

- ▶ Scope
  - ▶ 10 retailers covered
  - ▶ Only covers interaction between retailers and direct suppliers
- ▶ Improve transparency and certainty
  - ▶ Written agreements
  - ▶ Prohibit retrospective changes to those agreements
- ▶ Evidential burden on the retailer
  - ▶ Fair dealing provision
  - ▶ Definition of “require”
- ▶ Dispute resolution procedure
- ▶ Retailer accountability
- ▶ Ability to fine up to 1% of UK turnover – expected only in severe or repeated breaches

## What does an Adjudicator add?

- ▶ Permanent body with responsibility for enforcement of GSCOP
- ▶ Funded by a levy paid by the designated retailers
- ▶ The Adjudicator can:
  - ▶ Arbitrate disputes between retailers and suppliers
  - ▶ Investigate confidential complaints from direct and indirect suppliers, whether in the UK or overseas, and from third parties
  - ▶ Issue recommendations to resolve differences in interpretation
  - ▶ Hold to account retailers who break the rules by-
    - ▶ 'naming and shaming'
    - ▶ imposing a fine – up to 1% of turnover
- ▶ Appeals to the High Court

## Adjudicator appointment

- ▶ Christine Tacon appointed Adjudicator
  - ▶ GCA has statutory basis and became operational in June 2013
  - ▶ Four year appointment
  - ▶ Industry roles in food and farming (including fast moving consumer goods and farm supply businesses) and regulated sector experience
  - ▶ £800k budget, levy funded
  - ▶ Staff of 5 (but some, including Christine Tacon, part time)
- ▶ Rolling five key areas of focus: forensics: third party audits; drop and drive: delivery performance; Forecasting/service levels; Requests for lump sum payments; Packaging and design charges

## Adjudicator approach

- ▶ Extensive engagement
  - ▶ With retailers – monthly meetings with CCOs, meetings with audit committees
  - ▶ Suppliers
  - ▶ Trade Associations
  - ▶ Annual Conference
- ▶ Awareness among suppliers still relatively low but rising
- ▶ Given resources, preference to resolve issues informally rather than formally

## Key Adjudicator actions to date (1)

- ▶ Tesco investigation: launched in February 2015 into possible breaches of the Code:
  - ▶ relating to delay in paying suppliers and
  - ▶ the prohibition against payments for better positioning of goods which are not the subject of a sales promotion
  - ▶ Related to ongoing SFO investigation
- ▶ Official case studies (summaries of issues considered by the Adjudicator, which have been reviewed and concluded):
  - ▶ Charging for shelf positioning - Tesco (Jan 2014)
  - ▶ Payments for target service levels - Co-op (Mar 2014)
  - ▶ Payments for multi-channel participation - Morrison's (May 2014)

## Key Adjudicator actions to date (2)

- ▶ Highlights the following priority areas:
  - ▶ Payments demanded by retailers
  - ▶ Multiple suppliers affected
  - ▶ The case studies reflect early clarifications on the code and can be viewed as an education piece for retailers
- ▶ Role as arbitrator: believed to be 2 arbitrations ongoing, both relating to delisting
- ▶ The adjudicator has reported success in relation to forensic audits as 8 of the ten large retailers have voluntarily committed to time limit conducting these. Previously audits could go back as far as six years, retailers have now agreed to limit this to two years
- ▶ CMA reviewing the extent to which suppliers receive written trading terms

## What have we learnt?

- ▶ Consistent findings of the existence and exercise of buyer power by large retailers in dealings with (small) suppliers
- ▶ The evidence seems to point to that power leading to reduced quality, choice and innovation in the medium term (but contrast with EU findings)
- ▶ In terms of remedy, the enforcement framework to back a Code is as important as the content of the Code
- ▶ UK regime appears to be working with increased compliance from retailers and anecdotally, increased willingness to raise the Code informally
- ▶ Granting of fining powers was needed in order to give the Adjudicator sufficient credibility – query whether powers will grow on review in 2016?

ESADE COMPETITION SYMPOSIUM  
Opinion of 31 March 2015 on Buying Alliances in the Retail  
Sector

Estelle Peres Bonnet, Rapporteur, Autorité de la concurrence  
Thursday September 17, 2015





# Outline

- Introduction : Context, Content and Objectives
- Assessment of Market Power
- Potential risks on downstream and upstream markets
- Assessment under the rules regarding Economic Dependence
- Conclusion : Recommendations/ Issues for consideration
- Q&As



# Context, Content and Objectives of the Opinion



## INTRODUCTION

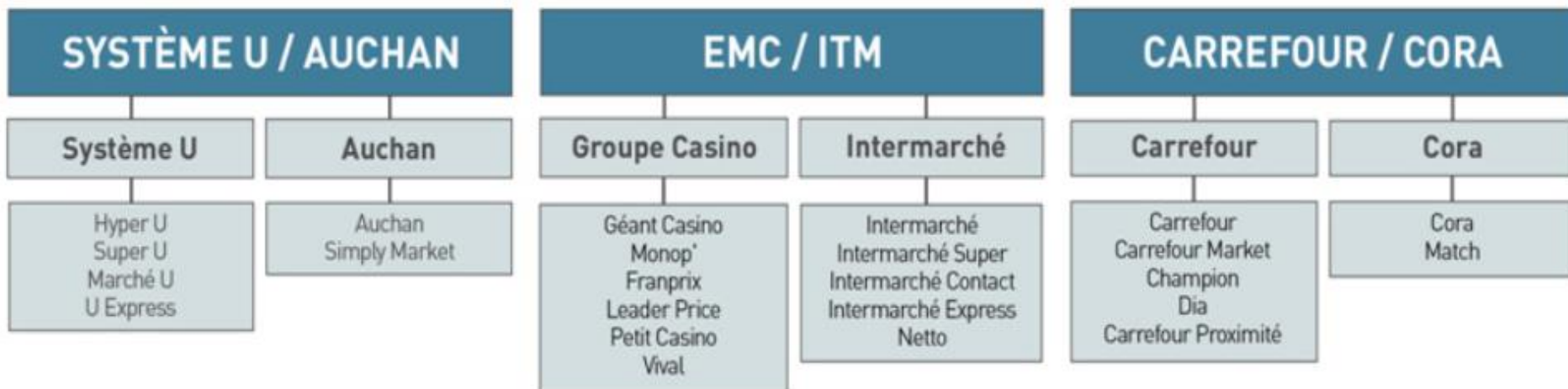
# Context (1/2)

- Price war/Reduced margins
- 3 co-operation agreements
  - Système U/Auchan
  - Groupe Casino/Intermarché
  - Carrefour/Cora
- 2 references
  - Minister for the Economy, Industry and Digital Affairs
  - Senate (Economic Affairs Committee)

# Context (2/2)



# Overview of the Agreements (1/2)



# Overview of the Agreements (2/2)

	Système U/Auchan	ITM/Casino	Carrefour/Cora
Motivation	<ul style="list-style-type: none"> <li>• Outsider position</li> <li>• Price war</li> <li>• Risk of loss of shops</li> </ul>	<ul style="list-style-type: none"> <li>• More competitiveness/profitability</li> <li>• Limit the risk of marginalization</li> </ul>	<ul style="list-style-type: none"> <li>• More price competitiveness</li> <li>• Increase competitive pressure on other actors in certain areas</li> </ul>
Form	Agency Agreement	Autonomous legal entity	Membership agreement
Scope (providers concerned/products concerned)	±300 providers (excl. SME)	±64 providers (excl. Economic dependance, MS >15 %)	±140 providers (excl. SME, agriculture)
Object	« Triple Net »	« Triple Net » and framewok agreement	« Triple Net » and framework agreement
Exclusivity	Yes	Yes	No

# Content and objectives of the Opinion

- Assessment grid for the retail sector
  - No individual assessment
  - Identification of *potential* risks
- Reflection on the effectiveness of the current system and recommendations

# Assessment of market power



## SECTION 1



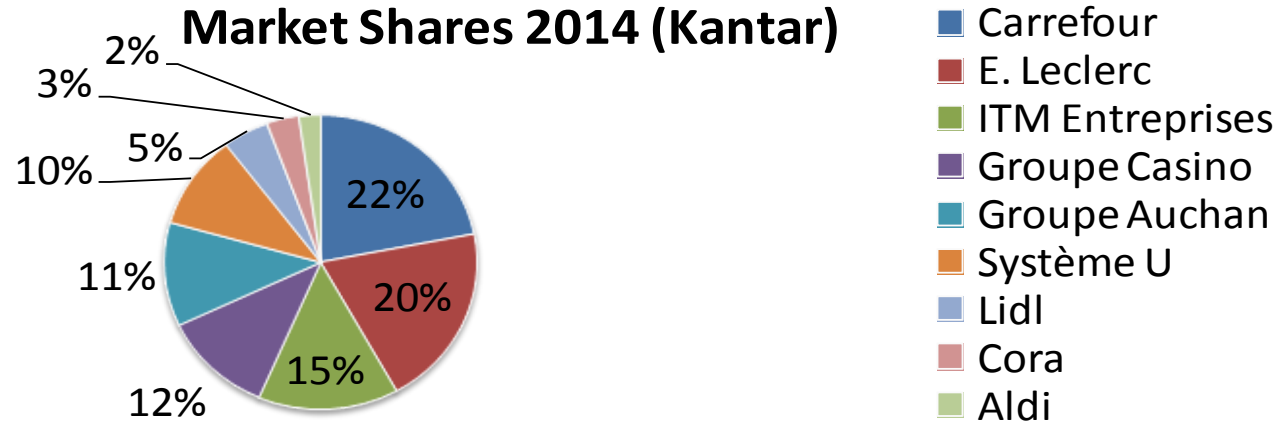
# Market Definition

- Upstream (assessment of buyer power)
  - 23 product categories
  - Possible sub-segmentation (by distribution channel, by brand)
- Downstream
  - « Traditionnal » product market definition (according to size, distance, service provided, etc.)
  - Local markets but need to take also into account situation at national level

# Upstream Market Power (Buying Power)

Product category	Auchan/Système U	Intermarché/Casi no	Carrefour/Co ra	Total
DIY	[<15 %]	[<15 %]	[<15 %]	[<50 %]
Delicatessen	[<15 %]		[<15 %]	[<50 %]
Culture	[<15 %]		[<15 %]	[<50 %]
Drugstore	[>15 %]	[>15 %]	[>15 %]	[>50 %]
Non perishable food	[>15 %]	[>15 %]	[>15 %]	[>50 %]
Large Home appliances	[<15 %]			[<50 %]
Audio	[>15 %]			[<50 %]
Garden	[<15 %]		[<15 %]	[<50 %]
Toys	[<15 %]	[<15 %]	[<15 %]	[<50 %]
Liquids	[<15 %]	[>15 %]	[>15 %]	[>50 %]
House	[<15 %]	[<15 %]	[<15 %]	[<50 %]
Bread and Pastries	[<15 %]			[<50 %]
Parapharmaceutical products	[<15 %]			[<50 %]
Body-care products and cosmetics	[>15 %]	[>15 %]	[>15 %]	[>50 %]
Small Home appliance s	[<15 %]	[>15 %]	[>15 %]	[<50 %]
Video	[<15 %]		[<15 %]	[<50 %]
Perishable products	[<15 %]	[>15 %]	[>15 %]	[>50 %]
Clothing/Shoes	[<15 %]	[<15 %]	[<15 %]	[<50 %]
TV/Video	[>15 %]			[<50 %]

# Downstream Market Power



## Market Shares following agreements (Estimate)





# Potential risks on upstream and downstream markets



## SECTION 2

# Potential risks on *downstream* markets (1/2)

- Risks of exchanges of information
  - Product purchase price
  - Discounts and fees for commercial cooperation
  - Product assortment on display, launch of new products or promotional activities
- Could lead to
  - Price coordination on the downstream market
  - Coordination on the commercial counterparts provided by distributors to the benefit of suppliers

# Potential risks on *downstream* markets (2/2)

- Symmetry of purchasing conditions and increasing commonality of costs
- Reduction of inter-brand mobility
- But limited risk of « spiralling effect »

# Potential risks on *upstream* markets

- Guidelines on horizontal agreements :

*“If the parties have a significant degree of market power on the purchasing market (buying power) there is a risk that they may force suppliers to reduce the range or quality of products they produce, which may bring about restrictive effects on competition such as quality reductions, lessening of innovation efforts, or ultimately sub-optimal supply” (§197)*

- Limited number of studies on the issue
- Selection criteria should be objective and non-discriminatory
- Cumulative effect



## Efficiency gains



## SECTION 3



# Efficiency gains

- Potential gains according to the parties
  - Reduced purchasing costs
  - Limitation of risk of exclusion downstream (« spiraling effect »)
  
- Price decrease at consumer level uncertain in light of market situation
  - Concentration on local markets
  - Risk of exchanges of information

# Assessment under the rules on Economic Dependance

## SECTION 4

# Abuse of Economic Dependence

- Art. L.420-2 § 2 of the French Code of Commerce prohibits “[...] *the abuse of the state of economic dependence of a client or supplier by an undertaking or group of undertakings is also prohibited, if it is likely to affect the functioning or structure of competition. This abuse may include a refusal to sell, tie-in sales or discriminatory practices mentioned in I of Article L. 442-6 or in product range agreements*”

# State of Economic Dependance

- Review of case law : economic dependance rarely established
- Multiplicity of assessment criteria
- Importance of comparative analysis of « exit options » available to both suppliers and retailers (switch brand, export, etc.)
- Effectivity of replacement solution(s)

# Retailers' share in suppliers' turnover

	Average share	Range	Share of suppliers included in the range			
			[0-10 %]	]10-20 %]	]20-30 %]	]30-40 %]
Carrefour/Cora	<b>23,40%</b>	[14 % ; 31,1 %]	0%	29 %	62,5 %	8,5 %
Intermarché/Casino	<b>20,2 %</b>	[4,9 % ; 34,7 %]	8,5 %	33,5 %	54 %	4 %
Auchan/Système U	<b>19,30%</b>	[12,4 % ; 27,6 %]	0%	50 %	50 %	0 %
E. Leclerc	<b>15,60%</b>	[4 % ; 28,3 %]	16,5 %	66,5 %	16,5 %	0 %

# Suppliers' share in retailers' turnover

	Average share	Range		Average share	Range
Automobile	<b>8,80%</b>	[0,5 % ; 26,3 %]	Liquids	<b>2,4 %</b>	[0,2 % ; 10,3 %]
DIY	<b>4,1 %</b>	[2,0 % ; 7,5 %]	Home	<b>3,0 %</b>	[0,8 % ; 6,4 %]
Delicatessen	<b>5,7 %</b>	[0,2 % ; 19,0 %]	Parapharmaceutical	<b>2,4 %</b>	[0,03 % ; 13,2 %]
Culture	<b>1,0 %</b>	[0,4 % ; 2,1 %]	Bodycare and cosmetics	<b>4,3 %</b>	[0,8 % ; 12,6 %]
Drugstore	<b>7,7 %</b>	[1,9 % ; 16,0 %]	Small Home appliances	<b>12,8 %</b>	[1,7 % ; 32,4 %]
[Preserved food]	<b>1,3 %</b>	[0,02 % ; 11,2 %]	Photo/Cinema	<b>9,6 %</b>	[6,7 % ; 16,5 %]
Large home Appliance	<b>4,6 %</b>	[0,3 % ; 13,0 %]	Perishable goods	<b>1,4 %</b>	[0,01 % ; 7,1 %]
Hi-fi/Son	<b>1,7 %</b>	[0 ; 7,3 %]	Clothing & shoes	<b>2,4 %</b>	[1,5 % ; 6,0 %]
Garden	<b>3,9 %</b>	[1,7 % ; 7,4 %]	Bread & Pastries	<b>9,4 %</b>	[0,01 % ; 23,6 %]
Toys	<b>3,6 %</b>	[1,3 % ; 6,0 %]	TV/Vidéo	<b>5,1 %</b>	[0 ; 40,4 %]

# Abusive Practices

- A number of abusive practices referred, e.g.
  - Delisting practices
  - Demands for advantages without consideration in return (incl. « margin guarantees »)
- Concerns raised in relation to the generalisation of such practices (cumulative effect)
- Mid or long-term effects on competition not excluded



## Recommandations / Issues for consideration



# CONCLUSION



# Recommandations / issues for consideration

- Proposals for legislative amendments
  - Prior notification of new partnership agreements ✓
  - New definition of the state of economic dependance (new wording art. L. 420-2) ✗
- Action of Ministry and commercial jurisdictions /  
Action of the *Autorité*



# Q&As

**Your World First**

**C/M/S/**  
Law . Tax

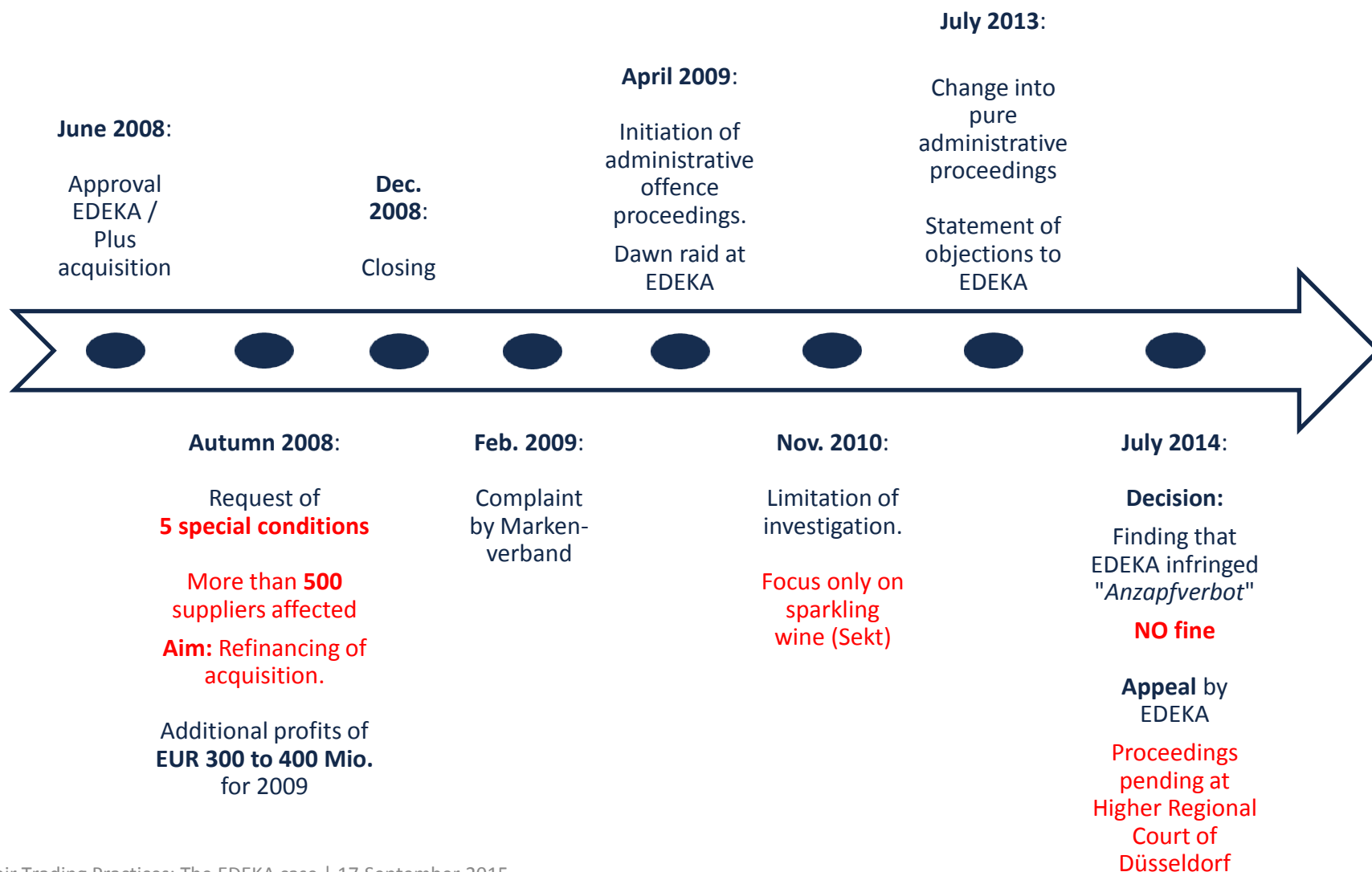


## **Unfair Trading Practices – The EDEKA case**

Dr Michael Bauer

Madrid, 17 September 2015

## EDEKA case | Timeline



## EDEKA case | Five requests

- 
- |          |  |  |
|----------|--|--|
| <b>1</b> | <b>Most favored value comparison of past net-net purchase prices</b> | Comparison using three reference dates in the past |
|----------|--|--|
- 
- |          |   |   |
|----------|---|---|
| <b>2</b> | <b>Most favored value comparison of payment dates</b> | No consideration of package of terms and conditions |
|----------|---|---|
- 
- |          |  |                                  |
|----------|--|----------------------------------|
| <b>3</b> | <b>Synergy bonus of 0.5% of total turnover</b> | Without measurable synergy gains |
|----------|--|----------------------------------|
- 
- |          |   |                                    |
|----------|---|------------------------------------|
| <b>4</b> | <b>Partnership bonus of 4% on previous turnover</b> | To make Plus shops more attractive |
|----------|---|------------------------------------|
- 
- |          |   |   |
|----------|---|---|
| <b>5</b> | <b>Extension of product range bonus of 10% on expected additional turnover or 40 euros per item</b> | Without measurable return service as no specific listing commitment |
|----------|---|---|
-

# Concept of unfair trading practices under German law

<b>Addressee</b>	Dominant buyers (retailer)	Presumption: As of 40% market share
	Each buyer (retailer) in relation to suppliers which are <b>dependent</b> on the buyer	<ul style="list-style-type: none"> <li>▪ General position buyer downstream market</li> <li>▪ General position buyer procurement market</li> <li>▪ Position on affected procurement market</li> <li>▪ Bilateral positioning, i.e. sales share buyer</li> </ul>
<b>Prohibited</b>	Buyer <b>requests economic advantage ...</b>	<ul style="list-style-type: none"> <li>▪ Advantage: bonus, rebate, payments, date of payment etc</li> <li>▪ <b>Every request or ultimate request ?</b></li> </ul>
	<b>... without objective justification</b> (delineation towards "hard bargaining")	<u>New criteria in EDEKA case:</u> <ul style="list-style-type: none"> <li>▪ advantage/service reasonably linked</li> <li>▪ Reasoning/calculation of request and service comprehensible (transparent)</li> <li>▪ Advantage proportionate (only evidence test)</li> </ul>
<b>Possible consequences</b>	<ul style="list-style-type: none"> <li>▪ <b>Cease and desist order</b></li> <li>▪ Fine</li> <li>▪ Damage claims</li> </ul>	<p>Up to 10% turnover</p> <p>FCO decision binding</p>

## EDEKA case | Theory of harm

---

### High concentration on retail market

- EDEKA market leader
- Only two other relevant retail groups

---

### Smaller retailers are no longer independent

- Smaller retailers often members of same buying group with market leaders
- No independent negotiation of purchase conditions

---

### Strong link between purchase conditions and downstream market position

- Smaller retailers need protection against better purchase conditions achieved unfairly by market leaders

---

### EDEKA requests prevent suppliers from offering better conditions to smaller retailers

- Suppliers need to avoid negative consequences following future acquisitions
- Waterbed effect: split of purchase conditions

---

### Concentration will be fostered

- Market leaders gain market shares steadily
- Spiral effect

---

***The concept of consumer welfare is not limited to "price" and "volume" but also requires to consider the impact on "product quality" and "innovation"***

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# Autoridade de Segurança Alimentar e Económica

“SYMPOSIUM ON INNOVATION, VARIETY AND COMPETITION IN CONSUMER GOODS “

17<sup>th</sup> September 2015

**ASAE**  
FOOD SAFETY AND ECONOMIC  
AUTHORITY

# ASAE

## LEGAL NATURE

- Central Public Administration Service, under the superintendence and guidance of the Ministry of Economy
  - The National Authority responsible for law enforcement on food safety and economic activities
  - The National Authority in charge of the official food control system
  - Responsible for risk assessment and risk communication on the food chain
  - Criminal Police Body
- Ensure the enforcement of market rules in Portugal, in order to guarantee the principle of fair competition and the pursuit of consumers' interests.

## LEGAL NATURE

ASAE isn't the Portuguese Competition Authority, which is also under the superintendence of the Ministry of Economy

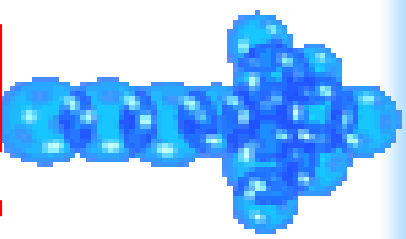
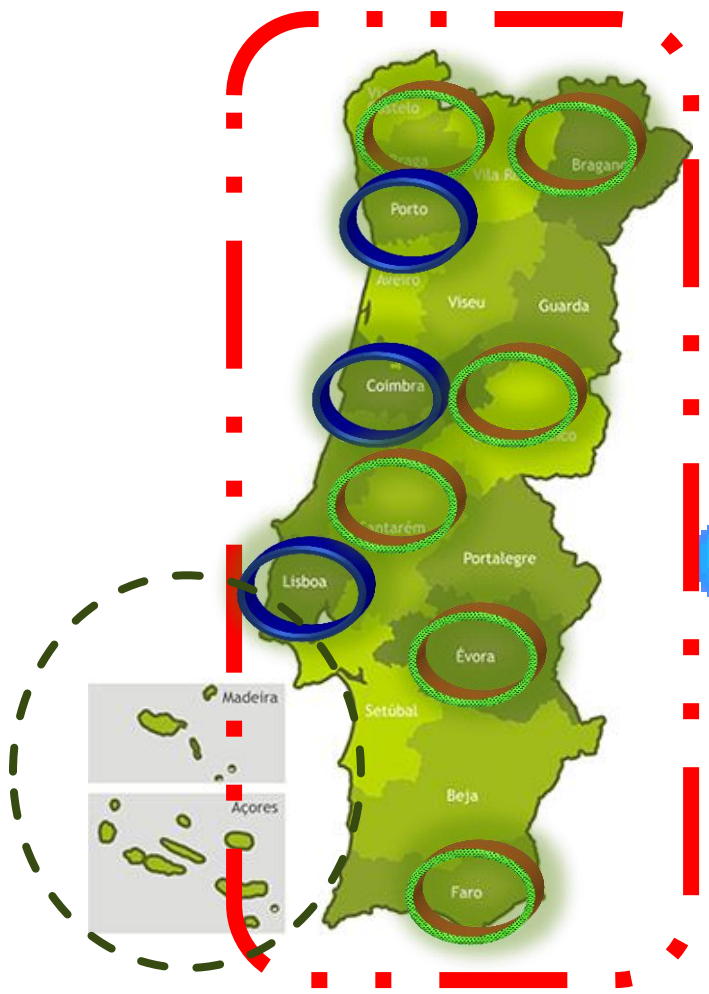


AUTORIDADE DA  
**CONCORRÊNCIA**



Ensure the enforcement of competition rules in Portugal, in order to guarantee the principles of an open market economy and free competition.

# TERRITORIAL LOCATION



ASAE

# CENTRAL CONTROL SERVICES



- National Control and Enforcement Unit
- National Information and Criminal Investigation Unit
- Department of Administration and Resources
- Department of Law Enforcement and Infringements

## COMPETENCIES AND RESPONSIBILITIES

- ➔ **Diversity of matters (more than 1 000 laws)**
- ➔ **Very wide horizontal scope, responsible for the enforcement on food, non food and services laws**
- ➔ **Cooperation with other specialized entities responsible for regulation or standardization matters**



## COMPETENCIES ON FOOD SAFETY

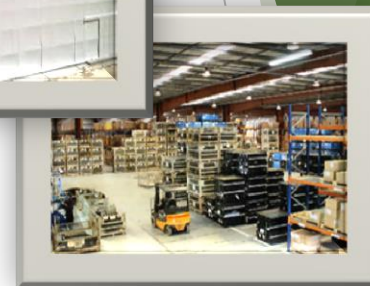
- ➔ Alcoholic beverages and wines
- ➔ Fish, meat and eggs
- ➔ Oil and vegetable oils
- ➔ Restaurants and cafes
- ➔ Hygiene of foodstuffs
- ➔ Feed
- ➔ Labelling of foodstuffs
- ➔ Babies' food
- ➔ Horticultural
- ➔ Materials in contact with foodstuffs

# SURVEILLANCE AND INVESTIGATION IN ALL THE CHAIN PRODUCT - FOOD SAFETY

## Production



## Storage



## Retail



# COMPETENCIES ON NON FOOD AND SERVICES

- Individual restrictive trade practices
- Tourism
- Industrial and intellectual property
- Toys
- Safety of products
- Sales and promotions
- Illegal gambling
- Sports facilities
- Articles of precious metals
- Construction products
- Pricing and Complaints book

## PREVENTIVE ACTION

**ASAE cooperates, spreading of the legislation related to matters in his scope of action, through:**

- Meetings with business associations and economic operators
- Seminars, events and various training activities
- In the acts of supervision and inspection
- Spreading the results of ASAE's enforcement activity

**ASAE executes Official and Control Plans and Programs, such as:**

- Official Plans and Programs
- Coordinated Control Plans of Fish and Honey (Food Fraud)
- Market Surveillance Program (Non-food sector)

## REPRESSIVE ACTION

ASAE's core nature as an enforcement body, is mainly on the repressive action, that can be a proactive or a reactive one:

- Proactive action based on priorities defined in the Operational Planning
- Reactive action on the basis of complaints

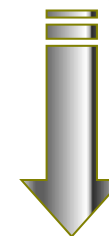
# LEGAL PROCEDURES

Criminal infringements

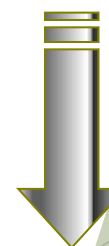


Prosecution of cases

ASAE



Public Prosecutor



COURT

NATIONAL LAW

Decree Law n° 28/84  
Decree Law n° 213/2004

Penal Code

**Interim Measures** - With the prior approval of the *Public Prosecutor*:

- The seizure and the immediate withdrawal of the product from the market;
- Suspension of activity or temporary closure of the establishment



# LEGAL PROCEDURES

Non-criminal infringements

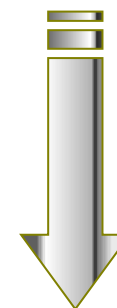


Prosecution of cases

**ASAE**

**NATIONAL LAW**

Laws and Decree Laws



Fines

Administrative Sanctions

## Interim measures:

- Send a notification to the business operator ordering to withdrawal the product from the market;
- When necessary, the seizure and the immediate withdrawal of the product from the market;
- Suspension of activity or temporary closure of the establishment

# LEGAL INSTRUMENTS TO ENSURE THE COMPETITION IN CONSUMER GOODS



## LEGAL INSTRUMENTS



Counterfeiting, imitation and illegal use of brand (crime)



Food fraude (crime)



Individual restrictive trade practices



Unfair competition



Unfair commercial practices

# COUNTERFEITING, IMITATION AND ILLEGAL USE OF BRAND

## Article 323° of the Industrial Property Code

- Total or partial reproduction of brand
- Total or partial imitation brand
- Use counterfeit brands
- Illegal use of designated origin or geographical indication



3 years



360 days

## Most affected sectors:

- Computer 39%
- Audiovisual 16%
- Textiles 10/16%
- Automobile parts 10%
- Sport and leisure 7%

# FOOD FRAUD

## Article 23° of Decree Law nº 28/84

Food Fraud is considered an economic criminal infringement related with the deception of the consumers.



1 year



100 days



## Top 10 FOOD FRAUD 2014 – 2015

Product	Infringement
OLIVE OIL	The usage of another oil
Precooked meat and fish based products	Substitution of species
Margarines	The usage of another fat
Fruits/vegetables (fresh)	Change of origin
Cheese	Adulteration
Wines	Adulteration / Counterfeit
Meat	Substitution of species
Fish	Substitution of species
Cod fish	Substitution of species
Food Supplements	Substitution/ingredients Adulteration

# INDIVIDUAL RESTRICTIVE TRADE PRACTICES

Decree-Law  
nº370/93

Decree-Law nº  
166/2013, 27 of  
decembre



## SCOPES

- ➔ Clarify the application of the legal framework regarding individual restrictive trade practices
- ➔ Transparency in trade relations
- ➔ Balance of the negotiation positions between companies
- ➔ Sufficiently deter its noncompliance

## Decree-Law nº166/2013 - Main changes

I) It applies only to companies established in national territory

II) Application to goods and services, in the food and non-food area (except, for example, buying and selling goods and services in the sectors of financial, postal, transport, electronic communications and energy)

III) Better definition of “selling below cost”, including deferred discounts being considered as part of the retail price

IV) Better definition of sales refusals and identification of reasons that can be accepted for that purpose

V) Better definition of abusive commercial practices (some practices have been explicitly identified as abusive)

## Decree-Law n°166/2013 - Main changes

VI) Mandatory written agreements

VII) Much higher fines (that can reach up to 2.5M€) so that they become effectively  
dissuasive

VIII) Interim measures and periodic penalty payments

IX) Enforcement, proceedings and case decision has passed to the exclusive  
jurisdiction of the ASAE

X) Also involves a concern for orienting towards self-regulation, as a complement to  
legislation, in order to improve better results on monitoring and conflict  
management

# FORBIDDEN INDIVIDUAL RESTRICTIVE TRADE PRACTICES

Application of discriminatory prices or sales conditions- art. 3º

Lack of transparency in pricing policies and sales conditions - art. 4º

Selling below cost- art. 5º

Refusals to sell goods or provision of services- art. 6º

Abusive commercial practices- art. 7º



# UNFAIR COMPETITION

## Article 331° of the Industrial Property Code

### Act :

- Contrary to honest norms and uses of any branch of economic activity,
- That create confusion with the business, products or services of competitors,
- Regardless of the form used.



ADDRESSEE	FINES (Minimum and maximum)
INDIVIDUALS	€ 750 - € 7 500
COMPANY /ENTREPRISE	€ 3 000 - € 30 000





# UNFAIR COMMERCIAL PRACTICES

## Decree-Law nº57/2008 (Directive 2005/29/CE)

- Applies to unfair commercial practices, including unfair advertising, which directly harm the economic interests of consumers and indirectly the economic interests of legitimate competitors.
- The competitors who have a legitimate interest in opposing unfair trade practices prohibited under the decree-law, may propose an injunction to prevent, correct or terminate such practices



ADDRESSEE	FINES (Minimum and maximum)
INDIVIDUALS	€ 250 - € 3 750
COMPANY /ENTREPRISE	€ 3 000 - € 44 891



# ENFORCEMENT RESULTS

## 1º semestre 2015

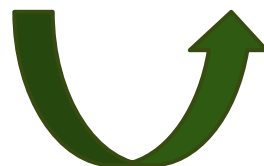
## ENFORCEMENT RESULTS - 1º semester 2015

OPERACIONAL ACTIVITY		
Supervised operators		19 914
Suspended activities		303
Criminal cases		539
Non-criminal cases		2 685
Detentions		214
Default rate		19%
Seizures	kg	426.004
	lt	391.765
	unities	1.031.180
	€	6.402.519

Nº of Inspectors- 224

# INDIVIDUAL RESTRICTIVE TRADE PRACTICES

ENFORCEMENT RESULTS		
<i>Nº of supervised operators</i>	<i>Cases</i>	<i>Decisions</i>
256	81	10



# ENFORCEMENT RESULTS

## Decree-Law n°166/2013, 27th of december

INFRINGEMENTS		Prevision
Failure to produce price tables with the conditions of sale, on request	4	art. 4°/1
Non written provisions on conditions of sale	3	art. 4°/3
Selling below cost	70	art. 5°
Refusals to sell goods or provision of services	3	art. 6°
Failure to provide or providing false information, inaccurate or incomplete to the supervisory authority	1	art. 9°
<b>TOTAL</b>	<b>81</b>	

# Thank you for your attention!

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